Supreme Court, U.S.
FILED

No. _____

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In The Supreme Court of the United States

BARBARA J. ANDERSON
and
A. JOSEPH ANDERSON,

Petitioners,

v.

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA
and
WATCHTOWER ENTERPRISES, L.L.C., ET AL.,

Respondents.

Petition for a Writ of Certiorari to the Tennessee Court of Appeals

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PETITION FOR WRIT OF CERTIORARI

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PARTIES TO THE PROCEEDING WHOSE JUDGMENT IS SOUGHT TO BE REVIEWED

Pursuant to Rule 14.1(b), the following list identifies all parties to the proceedings before the Tennessee Court of Appeals whose judgment is sought to be reviewed:

The Petitioner here and Appellee below is Barbara J. Anderson.

The Respondents here and Appellants below are: Watchtower Bible And Tract Society Of New York, Inc., Watch Tower Bible And Tract Society Of Pennsylvania, Watchtower Enterprises, L.L.C., Watchtower Foundation, Inc., Watchtower Associates, Ltd., Kingdom Support Services, Inc., Christian Congregation Of Jehovah's Witnesses, Religious Order Of Jehovah's Witnesses, The Watchtower Group, Inc., Manchester Congregation Of Jehovah's Witnesses Elders, Lawrence A. Seely, Gary Hobson, Dale Dormanen, Robert E. Matthews, David Semonian, J. R. Brown, John Doe #1, John Doe #2, John Doe #3, John Doe #4.

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The unpublished decision of the Tennessee Court of Appeals can be found on Westlaw at 2007 WL 161035 (Tenn.Ct.App.) ANDERSON v. WATCHTOWER, M2004-01066-COA-R9-CV (Tenn.Crim.App. 1-19-2007). The opinion is reprinted in Appendix B (pp.2 - 74).

JURISDICTION

On January 2007, the Tennessee Court of Appeals reversed the ruling of the Circuit Court and dismissed this action for lack of jurisdiction under the First Amendment and Ecclesiastical Abstention Doctrine. On May 14, 2007, the Tennessee Supreme Court denied Petitioner Barbara Anderson's Application for Leave to Appeal. The Petitioner filed this Petition for Writ of *Certiorari* within 90 days from the denial of the Application for Leave to Appeal. This Court has jurisdiction under 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISION INVOLVED IN THE CASE

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press: or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.
U.S. Constitution Amend I.

All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the

United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.
U.S. Constitution Amend XIV, Section 1

STATEMENT OF THE CASE

A. Factual Background

Church officials defamed Plaintiff Appellee Barbara J. Anderson in the course of media interviews that were published nationally. The defamation was not made as part of any church proceeding or decision but was made to reporters who then had the defamatory statements published in their respective media.

The facts giving rise to this defamation are as follows. Plaintiff Appellee Barbara J. Anderson in the early 1990s discovered that a number of Jehovah's Witnesses members, including some of the elders, had engaged in child sexual abuse. She further learned that the Jehovah's Witnesses officials who managed and operated the religious organization knew of many of these incidents of child sexual abuse by members of the organization. Even worse, she learned that these officials had instituted or upheld organization policies that effectively prevented the report of many of these incidents to the appropriate authorities and to the congregation.

By 2001, Ms. Anderson had decided to go public with her knowledge of the church practices that tolerated child

sexual abuse. She agreed to appear on the NBC television program *Dateline* to discuss this matter. *Dateline* decided to film an interview of Ms. Anderson. This interview was taped on May 3, 2001. By this time, Ms. Anderson was living in Tennessee and was a member of the Manchester Jehovah's Witnesses Congregation.

On information and belief, Jehovah's Witnesses officials in New York in May of 2001 learned of Ms. Anderson's involvement with the *Dateline* program which had not yet been broadcast. They also apparently learned of an e-mail disclosing that Ms. Anderson had corresponded with the mother of a child who had been sexually abused by a church member. For the next several months, *Dateline* officials gathered additional information about child sexual abuse by church members and the response of the Jehovah's Witnesses to this problem. The *Dateline* program was scheduled to be broadcast on May 28, 2002.

With the *Dateline* broadcast approaching, the defendants on information and belief fraudulently and maliciously formulated a plan designed to destroy the credibility of Ms. Anderson and the other participants in the broadcast. In furtherance of this plan, Jehovah's Witnesses' officials in New York in late April, or early May, of 2002 sent a letter to the local elders of the Manchester Congregation and directed them immediately to convene a judicial committee hearing and to summon Ms. Anderson to a hearing. On information and belief, the reason for this haste was to have Ms. Anderson expelled from the church – or "disfellowshipped" - prior to the broadcast. They also directed the committee to charge Ms. Anderson with "apostasy," with

contributing an article to an apostate journal, and causing divisions in the church.

On information and belief, between May 6 and 11, 2002, defendant J.R. Brown, a national spokesman for the Jehovah's Witnesses, made comments to the media (which the media published) that several Jehovah's Witnesses members were to be summoned and tried on charges of having committed various spiritual violations for the purpose of determining whether they should be disfellowshipped for committing spiritual violations. He also advised a reporter from the Washington Post that the proceedings would focus on sins unrelated to public comments made on *Dateline* concerning sexual abuse. Brown's comments were reported in various media. A number of Jehovah's Witnesses in Tennessee and New York who were aware of Ms. Anderson's planned appearance on *Dateline* read or heard of these comments. They concluded that Brown was referring to Ms. Anderson as one of the persons charged with spiritual violations in general and with spiritual violations unrelated to the comments she planned to make on *Dateline*.

At the time the New York organization officials directed the local officials to take steps to disfellowship Ms. Anderson, the New York officials did not believe that Ms. Anderson had actually committed apostasy or caused divisions in the organization, or that she had committed any spiritual violation whatsoever. On information and belief, this hasty attempt to charge, try, and disfellowship Ms. Anderson and the other *Dateline* participants prior to the *Dateline* program was part of a scheme devised by the respondents: (1) to keep members of the Jehovah's Witnesses

from watching the program; and (2) to keep those who might watch from believing any statements she made on the program that were disfavorable to the Jehovah's Witnesses. Disfellowshipped members are not to be believed and are to be "shunned" by members of the organization.

When local elders declined to find Ms. Anderson guilty of the charges, the respondents in furtherance of their scheme concocted new charges against her. On May 17, 2002, respondent Larry Seely, a church official, contacted Ms. Anderson and told that her that she had been charged with **(1) disrupting the unity of the congregation and (2) undermining confidence in Jehovah's arrangements.** He asked her to attend another judicial hearing to be convened two days later. On information and belief, the corporate respondents directed Mr. Seely to take these steps. **Once again, none of the respondents actually believed Ms. Anderson had committed any of the charges made. They knowingly made the false charges to silence and discredit her.**

Recognizing that the charges were a sham intended to silence her, Ms. Anderson declined to attend the hearing. On information and belief, the local elders held the May 19, 2002, hearing and, based on false information supplied by the respondents, purported to find her guilty of causing divisions in the church. They ordered that she be disfellowshipped from the church.

On May 20, 2002, David Semonian, another national spokesman for the Jehovah's Witnesses, made comments to the media that I Corinthians chapter 5 in the Bible is the scriptural basis for the practice of disfellowshipping members who are

unrepentant about such serious sins as fornication, extortion, and drunkardness. A number of Jehovah's Witnesses in Tennessee and New York who were aware of Ms. Anderson's planned appearance on *Dateline* read or heard of these comments and understood that Mr. Semonian was referring to Ms. Anderson as one of the persons charged with fornication, extortion, and drunkardness and who was unrepentant about committing these sins.

On May 28, 2002, after the fraudulent disfellowshipping, *Dateline* aired its segment on the Jehovah's Witnesses. The segment featured an interview with Ms. Anderson. During the interview, the narrator stated that Ms. Anderson in her research at the New York headquarters had discovered "hundreds of molestation cases on record, all kept secret in church files--secret not only from the outside world, but from the members themselves, the families, the mothers and fathers and children who trust the church is looking out for them." Ms. Anderson explained the church's policy of requiring multiple witnesses to substantiate child abuse allegations. She also stated that the "Watchtower Society didn't want to acknowledge that these girls were telling the truth because they were accusing elders of molesting them."

On May 28, 2002, Ms. Anderson received the May 23 letter stating that she had been disfellowshipped for "causing divisions." On June 8, 2002, the *Dateline* program was broadcast a second time.

On July 21, 2002, the Jehovah's Witnesses denied Ms. Anderson's appeal of the decision to disfellowship her. The

following Thursday, July 25, 2002, a brief announcement was made at the Thursday evening church services that "Barbara Anderson has been disfellowshipped."

Following the decision, all members of the Jehovah's Witnesses "shunned" Ms. Anderson. This included her only child and grandchild. This caused her to suffer great emotional distress. Ms. Anderson's mother refused to shun her daughter but Ms. Anderson's son in retaliation shunned his grandmother. This caused further emotional distress to Ms. Anderson.

B. Proceedings Below

On November 7, 2002, Ms. Anderson filed a Complaint against the respondents in the Circuit Court for Coffee County, Tennessee. (App. at D. p. 78). Ms. Anderson subsequently filed the Amended Complaint against the respondents. The Amended Complaint expressly alleged intentional, fraudulent, and malicious conduct by each respondent to use the organization's otherwise legitimate right to disfellowship members to silence Ms. Anderson in her efforts to assist victims of child sexual abuse and to prevent the church from sheltering child abusers:

> The individual named Defendants are members of the organization of Jehovah's Witnesses who participated in the Defendants' plan to intentionally, fraudulently, and maliciously used its otherwise legitimate right to disfellowship members to silence Plaintiff Barbara J. Anderson in her efforts to assist victims of child sexual abuse and to prevent the

> church from sheltering child abusers. All Defendants entered into a conspiracy to accomplish this goal and either directly or through their agents took steps to accomplish it.

In alleging jurisdiction of the Circuit Court over the out-of-state defendants, the Amended Complaint alleged that the defendants committed the tortious acts alleged "for the purpose of harming and affecting ...[Ms. Anderson]" and that they engaged in a conspiracy to disfellowship ...[her]."

With respect to the defendants' attempt to stop Ms. Anderson from appearing on *Dateline* by disfellowshipping her, the Amended Complaint alleged that this was done as part of a conspiracy designed to destroy the credibility of the participants in the broadcast. (App. at D, pp. 97, 98). By disfellowshipping Ms. Anderson, the defendants hoped that organization members would not believe "any statements she made on the program that were disfavorable to the Jehovah's Witnesses." (App. at D, p. 98).

The Amended Complaint alleged causes of action for defamation and fraud. Each cause of action incorporated by reference the previous allegations of fraudulent conduct by the respondents and also contained additional allegations that the specific tort alleged in the count was committed as part of the defendants' fraudulent plan to silence the plaintiffs by disfellowshipping them. For example, Count One, which alleged the defamation of Barbara Anderson arising from statements made by church officials to the media, alleged:

> 80. That, at the time the Defendant

committed any spiritual violations and that no grounds for disfellowshipping existed; he also knew that the proceedings were being conducted as part of the Defendants' fraudulent and malicious plan designed to use their otherwise legitimate right to disfellowship members to destroy the credibility of Plaintiff Barbara J. Anderson prior to her *Dateline* appearance, so as to frustrate her efforts to assist victims of child sexual abuse and to prevent the church from sheltering child abusers;

(App. at D, pp. 104, 105)

86. That, at the time the Defendant Semonian made the aforesaid statements, he knew that the Plaintiff Barbara J. Anderson had not committed any spiritual violations and that no grounds for disfellowshipping existed; he also [knew] that the proceedings were being conducted as part of the Defendants' fraudulent and malicious plan designed to use their otherwise legitimate right to disfellowship members to destroy the credibility of Plaintiff Barbara J. Anderson prior to her Dateline appearance, so as to frustrate her efforts to assist victims of child sexual abuse and to prevent the church from sheltering child abusers.

(App. at D, p. 106).

Count Five, which alleged fraud, alleged:

123. That, on information and belief, the Defendants on or about April or May of 2002 formulated a fraudulent and malicious plan designed to use their otherwise legitimate right to disfellowship members to destroy the credibility of Plaintiff Barbara J. Anderson prior to her Dateline appearance, so as to frustrate her efforts to assist victims of child sexual abuse and to prevent the church from sheltering child abusers.

124. That, the Defendants, acting individually, as agents for the other Defendants, and as part of their conspiracy, intentionally represented to members of the Jehovah's Witnesses committees considering whether to disfellowship the Plaintiffs, to the members of the Manchester congregation, and to inquiring members of the media that the Plaintiffs had committed spiritual violations that justified their expulsion from the faith;

125. That the Defendants concealed from the members of the Jehovah's Witnesses committees considering whether to disfellowship the Plaintiffs, to the members of the Manchester congregation, and to inquiring members of the media that Plaintiff Barbara J. Anderson had not committed any spiritual violations;

126. That the Defendants knew that these representations were untrue, that the facts concealed were material, and that the Plaintiff

had not committed any spiritual violation that would justify disfellowshipping:

App. at D, pp. 115,116.

On August 8, 2003, the respondents Watchtower Bible and Tract Society of New York, Inc., Kingdom Support Services, Inc., Christian Congregation of Jehovah's Witnesses, Religious Order of Jehovah's Witnesses, Manchester Congregation of Jehovah's Witnesses, Lawrence A. Seely, David Semonian, Robert E. Matthews, and J.R. Brown filed a Motion to Dismiss Amended Complaint. In this motion, they contended that the Amended Complaint should be dismissed, *inter alia*, pursuant to Tenn. R. Civ. Pro. 12.02(1) for lack of subject matter jurisdiction on grounds that the Ecclesiastical Abstention doctrine and the First Amendment precluded judicial review of the allegations in the Amended Complaint.

By Order dated November 3, 2003, the Circuit Court denied the motion to dismiss. The circuit court ruled that the allegations of fraud by the church removed the case from the limitations on judicial review imposed by the Ecclesiastical Abstention doctrine and the First Amendment. The respondents thereafter filed an interlocutory appeal. In their appellants' brief, the respondents contended that the Ecclesiastical Abstention doctrine and the First Amendment deprived the circuit court of jurisdiction over the dispute.

On January 19, 2007, the Tennessee Court of Appeals filed its opinion reversing the circuit court and granting the motion to dismiss for lack of subject matter jurisdiction. In its opinion, the court noted that, pursuant to the Ecclesiastical

Abstention doctrine, "courts of this State are without jurisdiction to inquire into or supervise the decisions of religious organizations." The court acknowledged that the petitioner had crafted her suit to bring the action within the fraud exception to this rule. The Court of Appeals effectively ruled, however, that there is no fraud exception to the doctrine. The court reasoned that recognition of a fraud exception would necessarily require it to review purely ecclesiastical matters:

> The Supreme Court has never definitively endorsed a fraud or collusion exception but has merely left the issue open for possible future consideration. In order to effectively review the Andersons claim of fraud, we would have to decide not only whether false information was used to procure their expulsion, but whether they would have been expelled in the absence of such information. Such an inquiry is prohibited... We also agree that the inherently ecclesiastical nature of the dispute is logically inconsistent with a fraud or collusion exception to the First Amendment bar on judicial review of the Church's decision to disfellowship Ms. Anderson.

The Court of Appeals likewise rejected court review of the decision to determine pretext. ("To determine whether the reason given by the Church for the expulsion were pretextual, a court would necessarily have to inquire into the correctness of the disfellowshipping and whether it was consistent with the church's religion doctrine and internal policies. This is an inquiry the court cannot make because it would result in

excessive inquiry into ecclesiastical matters in contravention of the First Amendment").

Finding no fraud or pretext exception to the Ecclesiastical Abstention doctrine, the court held that Ms. Anderson's claim for common law fraud would be dismissed. The Court of Appeals applied this rationale to preclude review even of the defamatory statements made by the defendants to the general public as a result of statements made to the media:

> In order to determine whether the statements at issue were defamatory, a court would have to determine, among other things, if it were false. We cannot see how such an inquiry could be conducted and adjudicated without encroaching on religious matters. Additionally, to determine the falsity of the statements, a court would have to inquire into the correctness of the decision of the Church tribunal that she had committed spiritual violations meriting expulsion.

The Court of Appeals made this ruling even though the defamation was made in the course of media interviews and separate and apart from any church proceeding.

REASONS FOR GRANTING THE PETITION

This case presents two exceptionally important questions concerning the First Amendment law and the scope of the Ecclesiastical Abstention doctrine that should be but have not yet been decided by this Court. Does the Ecclesiastical Abstention doctrine preclude state court

jurisdiction over a cause of action asserted by a former church member arising from knowingly false defamatory statements made by church officials in the course of media interviews that are separate and apart from any church proceeding or decision?

The petition also raises a second equally important question - Is there a fraud or pretext exception to the Ecclesiastical Abstention doctrine that allows state courts to exercise jurisdiction over cases wherein a church member alleges that she was expelled from the church as a result of fraud by church officials? In this case, the church member alleged that church officials expelled her by knowingly and falsely representing to the congregation that she had committed spiritual violations, when in fact the church officials expelled her because she had exposed church policies that tolerated child sexual abuse by church members.

The Tennessee Court of Appeals held that the Ecclesiastical Abstention doctrine precluded state court jurisdiction in either case. Although the petitioner had proffered and argued that she did not challenge any religious doctrine and sought only to prove that church officials had knowingly committed fraud and had knowingly defamed her to the media, the court reasoned that any judicial review of her allegations would necessarily entangle the court in church doctrine in violation of the First Amendment.

A. The Tennessee Court of Appeals has decided an important federal question that has not been but should be settled by this Court concerning whether the Ecclesiastical Abstention doctrine should be extended to preclude judicial review of defamation to the media knowingly made by church officials

separate and apart from any ecclesiastical undertaking.

The Ecclesiastical Abstention doctrine provides that civil courts are generally precluded from reviewing decisions of tribunals created by religious organizations pertaining to matters of internal discipline, faith, church customs, and church government, if **but only if** such review would require **extensive inquiry** by civil courts into religious law and polity. The doctrine is "rooted" in the First Amendment to the United States Constitution and is applicable to limit state court jurisdiction through application of the Fourteenth Amendment. Kedroff v. St. Nicholas Cathedral, 344 U.S. 94, 116 (1952). When a church official knowingly defames a member in media interviews and apart from any ecclesiastical undertaking, however, the doctrine should not and does not apply.

The defamation alleged in Count I was not committed as part of any ecclesiastical undertaking. Nor was it part of a decision by any church group. Rather, church officials made the defamatory statements to reporters for the Washington Post and other media organizations **in the course of conducting media interviews.** Despite the fact that the defamation was not made in the course of any church proceeding or decision, the Court of Appeals ruled that the Circuit Court lacked jurisdiction to review the defamation claim because, in the view of the Court of Appeals, such review would necessarily entangle the court in review of church doctrine.

The petitioner submits that the only question the court will have to review is whether the church officials knowingly fabricated the defamatory comments but Mrs. Anderson was publicly and falsely accused of fornication, extortion and

drunkenness. Moreover, by going public with the defamatory comments to the media, church officials waived any First Amendment protection that might otherwise exist. While the First Amendment in the absence of fraud may provide protection to defamatory comments made in church proceedings to the congregation, there certainly is no justification for extending the protection to clearly defamatory statements voluntarily made by church officials to the media that are separate and apart from any church proceeding, especially those statements intentionally made to the media for publication..

This Court has not yet decided whether the Ecclesiastical Abstention doctrine should be extended to preclude state court jurisdiction in this situation. The Petition for Writ of Certiorari should be granted to determine if the Ecclesiastical Abstention doctrine ;extends to defamation knowingly made to the media separate and apart from any church proceeding or decision.

B. The Tennessee Court of Appeals has decided an important federal question that has not been but should be settled by this Court concerning whether a fraud exception exists to the Ecclesiastical Abstention doctrine.

This Court has consistently recognized a fraud exception to the Ecclesiastical Abstention doctrine, although the Court to date has yet to apply such an exception to permit judicial review of a church dispute:

> There is no suggestion in this case that the decision of the commission was the product of

> "fraud" or "collusion." See *Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 713 (1976). In the absence of such circumstances, "the First and Fourteenth Amendments mandate that civil courts shall not disturb the decisions of the highest ecclesiastical tribunal within a church of hierarchical polity, but must accept such decisions as binding on them, in their application to the religious issues of doctrine or polity before them." *Id.*, at 709.

Jones v. Wolf, 443 U.S. 595, 609 note 8 (1979)(emphasis added). See also In Serbian Orthodox Diocese v. Milivojevich, 426 U.S. 696, 708-09, 710-11, 721-22 (1976) (although the Court rejected the arbitrariness exception to the doctrine, the Court did not reject the fraud exception but simply noted that fraud had not been alleged in the underlying case); Gonzalez v. Roman Catholic Archbishop of Manila, 280 U.S. 1, 16 (1929)("In the absence of fraud, collusion, or arbitrariness, the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive, because the parties in interest made them so by contract or otherwise"). The Court has not yet explained precisely what constitutes "fraud" or "collusion" for purposes of this exception. In Serbian Orthodox Diocese v. Milivojevich, 426 U.S. at 717, the Court indicated that these exceptions applied "when church tribunals acted in bad faith for secular purposes...."

While it is true that the Court in the foregoing cases did not *apply* the fraud exception but merely recognized that it exists, the Court did effectively apply a fraud or pretext

exception in Ohio Civil Rights Commission v. Dayton Christian Schools, 477 U.S. 619, 628 (1986). The Court in this case stated that no constitutional rights are violated where a tribunal investigates charges of a wrongful termination of a religious school employee to determine whether the school's claim that the termination was for a religious-based reason was the true reason for the discharge:

> Dayton [the religious school] contends that the mere exercise of jurisdiction over it by the state administrative body violates its First Amendment rights. But we have repeatedly rejected the argument that a constitutional attack on state procedures themselves "automatically vitiates the adequacy of those procedures for purposes of the *Younger-Huffman* line of cases." *Moore, supra,* at 427, n. 10. Even religious schools cannot claim to be wholly free from some state regulation. ... We therefore think that however Dayton's constitutional claim should be decided on the merits, the Commission violates no constitutional rights by merely investigating the circumstances of Hoskinson's discharge in this case, if only to ascertain whether the ascribed religious-based reason was in fact the reason for the discharge.

Ohio Civil Rights Commission v. Dayton Christian Schools, 477 U.S. 619, 628 (1986)(emphasis added). Although the Court

did not use the word "fraud" in this decision, the Court authorized the very review[1] that the petitioner seeks – to determine whether the ascribed religious based reason was in fact the reason for her expulsion and whether the church's statements to the media implying that she had committed spiritual violations were knowingly false when made.

Despite this case law, the Court of Appeals ruled that there is no fraud or pretext exception to the Ecclesiastical Abstention doctrine, even where the church member alleges that the church committed fraud to cover up child sexual abuse. Although the Court of Appeals was correct that this Court has not yet squarely held that the exception exists, the appellants respectfully submit that the Court should now do so.

The rationale for the decision of the Court of Appeals to reject the fraud exception is flawed. The Court of Appeals insisted that recognizing the fraud exception would necessarily entangle the court in religious doctrine. This is completely untrue. The sole inquiry the court must make in this lawsuit is – did the respondents really believe that Ms. Anderson had committed any spiritual violations that warranted her expulsion, or did they fabricate the charges to silence her efforts to expose church policies that tolerate child sexual abuse? If they really believed that she committed spiritual violations, then the case is over, regardless of whether they were correct or not. But if they concede, or she otherwise proves that the charges were fabricated, then the First

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[1]That the reviewing body in this case was an administrative tribunal rather than a court makes no difference. The key point is that the Court ruled that the church's constitutional rights were not violated by this limited inquiry.

Amendment does not preclude judicial review of the torts they committed in furtherance of this fraudulent scheme.

Rejecting a fraud exception allows church officials to use the First Amendment as a sword instead of shield. They can effectively defame, defraud, and expel church members from the church for purely secular reasons – as happened in this case – and can prevent judicial review by claiming First Amendment protection. And when policies permitting child sexual abuse are at stake, any claim that the First Amendment protects such conduct perverts the very purpose of the constitutional provision which is to protect genuine religious belief, not potentially criminal activity.

The Tennessee Court of Appeals is not alone in being uncertain as to whether there is a fraud exception and if so, the scope of the exception. Federal courts and state courts in other jurisdictions have interpreted this Court's decisions as merely leaving open the possibility that a fraud or collusion exception exists. E.g., Hutchison v. Thomas, 789 F.2d 392, 399 (6th Cir. 1986) ("Assuming, without deciding, that review is allowed for fraud or collusion, it is still only allowed for fraud or collusion of the most serious nature undermining the very authority of the decision-making body. Certainly there is no claim or showing of such fraud or collusion here. And we emphasize that we do not hold that such great fraud would be a basis for court interference. We merely state that possibility has been left open by the Supreme Court"); Heard v. Johnson, 810 A.2d 871, 881 (D.C. 2002)("Johnson seems to ask us to apply this potential "fraud or collusion" exception to the Trustees' immunity claim. We decline to do so for many reasons. The "fraud, collusion, or arbitrariness" exception was

enunciated as dictum in Gonzalez. *Serbian, supra*, 422. U.S. at 712, 96 S.Ct. at 2382. The Supreme Court has already found the "arbitrariness" portion of the Gonzalez exception impossible to apply without infringing on First Amendment protections. *Id.* at 713. Even if the "fraud or collusion" portion of the Gonzalez exception has "concrete content," it is likely to be as impossible to apply as the "arbitrariness" portion of the exception. Furthermore, the Serbian Court's discussion of the "fraud or collusion" portion of the Gonzalez exception was itself dictum, since there was no claim or evidence of either fraud or collusion in the Serbian case. Finally, there are no extraordinary circumstances here that would warrant an application of a possible exception to First Amendment protections for church decisions").

Recognizing a fraud exception applicable to the instant case would also be consistent with public policy. Our nation has a strong public policy designed to prevent child sexual abuse. When petitioner Barbara Anderson learned of church policies that tolerated and virtually permitted continued child sexual abuse, she sought to have these policies changed by going public with her knowledge. Church officials designed and carried out a plan to destroy her credibility with church and the public by first expelling her from the church and by then defaming her through false and defamatory statements made to the media. This plan succeeded and caused her substantial injury in the form of damage to her reputation and emotional distress. Even worse, Ms. Anderson's effectiveness as a vocal opponent of church policies that tolerate and permit child sexual abuse is now compromised. Under these circumstances, public policy supports her attempt to obtain judicial review of the defendants' fraudulent conduct and defamatory statements

about her to the media.

Because there should be at least a limited fraud exception to the Ecclesiastical Abstention doctrine applicable to allegations such as those made by the petitioner, the circuit court accordingly had jurisdiction to try Ms. Anderson's common law fraud and defamation claims. The Petition for Writ of *Certiorari* accordingly should be granted so the Court can decide this important constitutional question.

CONCLUSION

The petitioner respectfully submits that this Petition for Writ of Certiorari should be granted.

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No. _____

In The Supreme Court of the United States

BARBARA J. ANDERSON
and
A. JOSEPH ANDERSON,

Petitioners,

v.

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA
and
WATCHTOWER ENTERPRISES, L.L.C., ET AL.,

Respondents.

Petition for a Writ of Certiorari to the Tennessee Court of Appeals

APPENDIX

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A. The Tennessee Supreme Court's Order denying Leave to Appeal.

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

BARBARA J. ANDERSON, ET AL. v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., ET AL.

Circuit Court for Coffee County
No. 32382

No. M2004-01066-SC-R11-CV

ORDER

Upon consideration of the application for permission to appeal field on behalf of Barbara and Joseph Anderson and the record before us, the application is denied. Motion for admission pro hac vice filed on behalf of Paul D. Polidoro, counsel for defendants, having also been considered, is granted.

PER CURIAM

B. Tennessee Court of Appeals' Opinion

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
April 14, 2005 Session

BARBARA J. ANDERSON, ET AL. v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., ET AL.

Appeal from the Circuit Court for Coffee County
No. 32382 John W. Rollins, Judge

No. M2004-01066-COA-R9-CV

Two former members of the Congregation of Jehovah's Witnesses filed suit against the church and its leaders for damages associated with their expulsion from the organization. The defendants filed a Tenn. R. Civ. P. 12.02(1) motion to dismiss their complaint on the ground that civil courts do not exercise jurisdiction over internal church matters. The trial court denied the motion. On interlocutory appeal, we hold that the trial court should have dismissed all of the plaintiffs' claims because they are barred by the First Amendment's protection of purely religious matters from interference by secular courts.

Tenn. R. App. P. 9 Interlocutory Appeal by Permission;
Judgment of the Circuit Court
Reversed

PATRICIA J. COTTRELL, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., J., and DONALD P. HARRIS, SENIOR, J., joined.

Paul D. Polidoro, Patterson, New York; Robb S. Harvey, Eileen Burkhalter Smith, Nashville, Tennessee, for appellants, Watchtower Bible and Tract Society of New York, Inc., et al.

Jerre M. Hood, Winchester, Tennessee; J. Edward Bell, III, Georgetown, South Carolina, for the appellees Barbara J. Anderson, et al.

OPINION

Plaintiff Barbara J. Anderson was a lifelong Jehovah's Witness. Her husband, A. Joseph Anderson, also a plaintiff, was an elder of the church. Both were members of the Congregation of Jehovah's Witnesses in Manchester, Tennessee, but were expelled or "disfellowshipped" from the church, leading to this litigation.

Mr. and Ms. Anderson filed suit against various components of the church hierarchy and some specific church leaders[1] (collectively "Church") and asserted eight claims in their complaint: (1) defamation; (2) defamation to the congregation; (3) false light invasion of privacy; (4) interference with prospective economic advantage; (5) breach of fiduciary duty; (6) fraud; (7) intentional infliction of emotional distress; and (8) wrongful disfellowshipping. They

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[1]The Complaint named as defendants the Religious Order of Jehovah's Witnesses, the Watchtower Bible and Tract Society of New York, Inc., the Manchester Congregation of Jehovah's Witnesses, and numerous other divisions of the church, as well as individual elders of the Manchester congregation and spokesmen for the national organization. The appellants' brief asserts that some of the named defendants "are not related to Jehovah's Witnesses in any way," including Watchtower Enterprises, LLC, Watchtower Foundation, Inc., Watchtower Associates, Ltd., and the Watchtower Group, Inc. We need not decide those issues in this appeal.

asked for $20 million in compensatory and punitive damages.

The defendants responded to the complaint with a motion to dismiss under Rule 12 of the Tennessee Rules of Civil Procedure. They argued that under Tenn. R. Civ. P. 12.02(1), the trial court must dismiss all the plaintiffs' claims for lack of subject matter jurisdiction, because the doctrine of ecclesiastical abstention bars the civil courts from interfering in the internal affairs of religious bodies. They also moved for dismissal under Tenn. R. Civ. P. 12.02(6) arguing the complaint ;failed to state a claim for relief. The trial court denied the motion to dismiss.

I. STANDARD OF REVIEW

The motion at issue herein was in part a Tenn. R. Civ. P. 12.02(1) motion, alleging lack of subject matter jurisdiction. Subject matter jurisdiction involves a court's authority to adjudicate a controversy brought before it. *Cawood v. State*, 134 S.W.3d 159, 163 (Tenn.204); *Northland Ins. Co. V. State*, 33 S.W.3d 727, 729 (Tenn. 2000). The question of whether a court has subject matter jurisdiction over a particular dispute is a question of land. *Heard v. Johnson*, 810 A.2d 871, 877 (D.D.C. 2002). Consequently, this court must review the trial court's decision on that issue under a *de novo* standard, without a presumption of correctness. *Cawood*, 134 S.E.3d at 163; *Letellier v. Letellier*, 40 S.W.3d 490, 493 (Tenn. 2001); *Northland Ins. Co.*, 33 s.w.3D AT 729.

In determining whether this action should have been dismissed for lack of subject matter jurisdiction, we must consider whether the trial court "had the power to enter upon the inquiry; not whether its conclusion in the course of it was right or wrong." *Stinson v. State*, 344 S.W.2d 369, 373 (Tenn.

1961), *quoting Aladdin Industries, Inc. V. Associated Transport, Inc.*, 323 S.W.2d 222.229 (1958). Subject matter jurisdiction is dependent upon the nature of the cause of action and the relief sought. *Northland Ins. Co.*, 33 S.W.3d at 729, *citing Landers v. Jones*, 872 S.W.2d 674, 675 (Tenn. 1994). Thus, in order to determine if a court has authority to hear and decide a particular controversy, it is necessary to identify and examine the nature or gravamen of the case.

Even though we review the trial court's decision on subject matter jurisdiction as a question of law, we must approach that analysis in the case before us in much the same way as a Tenn. R. Civ. P. 12.02(6) motion to dismiss for failure to state a claim. That is because a facial challenge to the court's subject matter jurisdiction is based on the allegation that the complaint fails to allege facts that show that the court has power to hear the case.[2] *United States v. Ritchie*, 15 F.3d 592, 598 (6th Cir. 1994) (explaining the two types of attacks based on subject matter jurisdiction, facial and factual); *Menchaca v. Chrysler Credit Corp.*, 613 F.2d 507, 511 (5th Cir. 1980); *Heard v. Johnson*, 810 A.2d. At 877.

> In deciding a facial challenge, the court considers the impugned pleading and nothing else. If a complaint attached on its fact competently alleges any facts which, if true, would establish grounds for subject matter jurisdiction, the court must uncritically accept those facts, end its inquiry, and deny the

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[2]A court must distinguish between motions to dismiss for lack of subject matter jurisdiction which attack the complaint on its face and those which attack the existence of jurisdiction in fact. *Titanium Vo. V. Westinghouse Elec. Corp.*, 78 F.3d 1125, 1134 (6th Cir. 1996).

dismissal motion.

Staats v. McKinnon, No. M2005-01631-COA-R9-CV, 2006 WL 1168826 (Tenn. Ct. App. 1006) (citations omitted); see also *Holt v. United States*, 46 F.3d 1000, 1002 (10th Cir. 1995); *Hiles v. Episcopal Diocese of Massachusetts*, 773 N.E.2d 929, 938 n. 13 (Mass. 2002).

In the case before us, the Church argued that the complaint asserted causes of action based on an intrachurch dispute that the courts had no authority to adjudicate, thus making a facial challenge to the court's jurisdiction based on the allegations of the complaint. Accordingly, we will apply the principles government Tenn. R. Civ. P. 12.02(6) motions. *Petruska v. Gannon University* 462 F.3D 294 (3rd Cir. 2006); *United States v. Ritchie*, 15 F.3D at 598, citing *Scheuer v. Rhodes,* 416 U.S. 232, 235-37 (1974) (holding that in a facial attack, the court must take all of the material allegations in the complaint as true and construe them in the lights most favorable to the nonmoving party); *Menchaca v. Chrysler Credit Corp.*, 613 F.2d at 511.

The first principle is that, for the purposes of the motion, the defendants admit the truth of all relevant and material averments contained in the complaint, but assert that such facts do not constitute a cause of action. *Stein v. Davidson Hotel Co.*, 945 S.W.2d 714, 716 (Tenn. 1997); *Da;vis v. The Tennessean*, 83 S.W.3d 125, 157 (Tenn. Ct. App. 2001). Second, we should construe the complaint liberally in favor of the plaintiff, taking all allegations of fact as true. *Cook v. Spinnaker's of Rivergate, Inc.*, 878 S.W.2d 934, 938 (Tenn.1994).

The question is whether, viewing the factual allegations

as prescribed, the plaintiffs have stated a claim that the courts have authority to hear, or, stated differently, have subject matter jurisdiction to adjudicate.[3]

II. FACTUAL ALLEGATIONS

The following account is derived from the allegations in the complaint, which we must assume are true.

Barbara Anderson worked as a volunteer researcher at the international headquarters of the Jehovah's Witnesses in Brooklyn, New York from 1982 to 1992. Ms. Anderson alleged that during the last years of her work at international headquarters she became concerned about the organization's handling of child sexual abuse allegations. She was of the opinion that Church policies and procedures "operated to the detriment of the victim and also to the detriment of the general congregation where the alleged molester or abuser was an active member....."

After she left her headquarters position, Ms. Anderson continued doing research for the organization from her home. She was also quietly assisting Jehovah's Witness abuse victims and interested parties with information and advice. In the year 2000, she began working with an elder from a congregation in Kentucky in a joint effort to change the policies of the church.

When these efforts proved to be fruitless, the elder

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[3]Apparently some courts would view the attack on subject matter jurisdiction made in this case as a Tenn. R. Civ. P. 12.02(6) motion to dismiss for failure to state a claim, characterizing the ecclesiastical abstention doctrine as a defense to any relief. *See, e.g., Bryce v. Episcopal Church in the Diocese of Colorado*, 289 F.3d 648, 654 (10th Cir. 202).

resigned his position and decided to go public with his concerns. Producers of *Dateline*, an NBC news television program, invited the elder and Ms. Anderson to be interviewed on the program. According to the complaint, officials of the governing body of the church learned about the planned broadcast and told Joseph Anderson he could be removed as an elder if he did not prevent his wife from appearing on the show. When the warning did not achieve the desired result, they allegedly induced the elders of the Manchester congregation to charge Barbara Anderson with apostasy and to begin disciplinary proceedings against her. According to the Andersons' complaint, apostasy is defined in English common law as turning away from one's faith, and the Jehovah's Witnesses define apostasy as including stirring up unrest or causing divisions within ;their church.

On May 10, 2002, Ms. Anderson appeared before ;a judicial committee of the Manchester congregation for trial on the charges of submitting an ;article to an apostate journal and causing division in the church. New charges were leveled against Ms. Anderson the following week: disrupting the unity of the congregation and "undermining confidence in Jehovah's arrangements."

Ms. Anderson declined to attend the second hearing. On May 19, 2002, the elders of the Manchester congregation found Ms. Anderson guilty of causing divisions in the church and ordered that she be disfellowshipped from the church.

The *Dateline* broadcast was aired on May 28, 2002. On June 5, Joseph Anderson sent a resignation letter to Watchtower Headquarters. He too was disfellowshipped. On June 8, the *Dateline* program was broadcast a second time. Stories about the *Dateline* broadcasts were published in the

New York Post, the *Washington Post*, and the *Tennessean*, both before and after they were aired. Reporters for these publications interviewed national and local officials of the Jehovah's Witnesses about the disciplinary proceedings against Ms. Anderson and the Kentucky elder. The spokesmen (all of whom have been named as defendants in this lawsuit) said that the proceedings involved "various spiritual violations."

III. COURT PROCEEDINGS

Barbara Anderson filed a complaint in the Circuit Court of Coffee County, and an amended complaint was filed on June 2, 2003, with Mr. Anderson joining as an additional plaintiff. The complaint described in detail the hierarchical structure of the Jehovah's Witnesses organization and asserted that all the individuals and entities whose acts were complained of performed those acts as agents of the governing body of the Church and of the Church itself and, thus, that the Church was vicariously liable for the conduct of those acting in its name.

Mr. And Ms. Anderson recounted the events recited above and described the effect their expulsion from the church had on their lives. Because of the doctrines of Jehovah's Witnesses, disfellowship carries with it serious consequences. All members of the church are instructed to shun those who have been disfellowshipped. Shunning involves ostracizing those individuals and avoiding every kind of social interaction with them. For the Andersons, this meant losing contact with their only child and grandchild.

As stated earlier, Mr. And Ms. Anderson recited eight claims or causes of action in their complaint, all of which related to or resulted from the actions the Church took against them. In its motion to dismiss, the Church argued that the trial

court was required to dismiss all the plaintiffs' claims for lack of subject matter jurisdiction because civil courts have no jurisdiction to review decisions of religious bodies on matters of religious doctrine, discipline, or governance.

The trial court denied the Church's motion to dismiss, holding that the doctrine of ecclesiastical abstention did not preclude jurisdiction over the plaintiffs' claims. While the court determined that it was appropriate to allow the lawsuit to go forward, it concluded its order with these words:

> Even in the absence of the doctrine of 'ecclesiastical abstention' which this writer wholeheartedly embraces, the litigants can rest assured that the troubled soul of this trial judge has no desire to sit in judgment on matters of internal discipline, faith, church customs, and church government of his fellow human beings. Nor to permit a jury to do likewise.

IV. JUDICIAL REVIEW OF ECCLESIASTICAL MATTERS

The Church argues that the trial court lacks subject matter jurisdiction over this action because it involves ecclesiastical matters. That argument rests upon a principle long a part of American law, which is that courts in this country do not exercise jurisdiction over purely ecclesiastical, religious, or theological disputes. "[C]ourts have no ecclesiastic jurisdiction, and do not pass upon questions of faith, religion, or conscience...." *Bentley v. Shanks*, 348 S.W.2d 900, 903 (Tenn. Ct. App. 1960); *se also Nance v. Busby*, 18 S.W. 874, 879 (Tenn. 1891).

This ecclesiastical abstention doctrine (sometimes called the church autonomy doctrine, *see, e.g., Bryce v. Episcopal Church in the Diocese of Colorado*, 289 F.3d 648 (10th Cir. 2002)), is rooted in the First Amendment to the United States Constitution, and its purpose is to prevent the civil courts from engaging in unwarranted interference with the practices, internal affairs, and management of religious organizations.[4] *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 116 (1952); *Murrell v. Bentley*, 286 S.W.2d 359, 365 (Tenn. Ct. App. 1954). Civil courts cannot adjudicate disputes turning on church policy and administration or on religious doctrine and practice. *Servian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 708-709 (1976); *Presbyterian Church v. Mary Elizabeth Hull Memorial Presbyterian Church*, 393 U.S. 440, 446-47 (1969); *Kedroff v. St. Nicholas Cathedral*, 344 U.S. at 116; *Gonzalez v. Roman Catholic Archbishop*, 280 U.S. 1, 16 (1929).

"A consequence of this Nation's fundamental belief in the separation of church and state is that, under most circumstances, the First and Fourteenth Amendments preclude civil courts from adjudicating church fights that require extensive inquiry into maters of 'ecclesiastical cognizance.'" *Burgess v. Rock Creek Baptist Church*, 734 F.Supp. 30, 31

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[4]The First Amendment's free exercise guarantee and its prohibition against laws respecting the establishment of religion have been made wholly applicable to the states by the Fourteenth Amendment. *School District of Abington Township v. Schempp, 374 U.S. 203, 215-216 (1963); Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940). Courts have at times varied in their identification of the source of the ecclesiastical abstention doctrine as the Free Exercise Clause or the Establishment Clause, or both. *See Rosati v. Toledo Catholic Diocese*, 233 F. Supp. 2d 917, 920 (N.D. Ohio 2002)(stating that the majority held that the doctrine is founded in the Free Exercise Clause).

(D.D.C. 1990), *citing Serbian Eastern Orthodox Diocese v. Milivojevich,* 426 U.S. at 709-10. The underlying premise is that our system of government, through the First Amendment, "has secured religious liberty from the invasion of the civil authority." *Watson v. Jones*, 80 U.S. 679, 730 (13 Wall.)(1872).

The United States Supreme Court has long held that the First Amendment requires civil courts to refrain from reviewing or interfering with decisions made by a religious body on matters of church discipline, faith, or practice. *Lewis v. Seventh Day Adventists Lake Region Conference*, 978 F.2d 940, 941-42 (6th Cir. 1992). Over one hundred and thirty years ago, the Court described the boundaries that courts must observe when presented with disputes between religious bodies and their numbers:

> The rule of action which should govern the civil courts, founded in a broad and sound view of the relations of church and state under our system of laws, and supported by a preponderating weight of judicial authority is, that, whenever the questions of discipline, or of faith, or ecclesiastical rule, or custom, or law have been decided by the highest of these church judicatories to which the matter have been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them.

Watson v. Jones, 80 U.S. 679 at 727. The Tennessee Supreme Court similarly held long ago that courts of this State are without jurisdiction to inquire into or supervise the decisions of

religious organizations.[5] *Nance v. Busby*, 18 S.W. at 881, citing *Watson*, 80 U.S. at 727. Tennessee courts have continued to refuse to hear disputes that are perceived to be purely ecclesiastical in nature. *Travers v. Abbey*, 58 S.W. 247, 247-48 (Tenn. 1900) (holding that dispute over removal of pastor did not involve property or personal rights, related to governance of and discipline by church, and courts would not review the decisions of ecclesiastical judicatures); *Martin v. Lewis*, 688 S.W.2d 72, 73 (Tenn. Ct. App. 1985).

Thus, decisions by the governing bodies of religious organizations on matters related to doctrine, faith, or church governance and discipline are not reviewable by civil courts. *Mason v. Winstead*, 265 S.W.2d 561, 563 (Tenn. 1954) (holding that in ecclesiastical matters, church tribunals have exclusive authority without interference from the civil courts). Stated differently, courts will defer to the highest tribunal in a

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[5]Because of its wording, the Tennessee Constitution's freedom of religion provision has been interpreted as possibly providing greater protection than the First Amendment to the United States Constitution. *State ex rel. Swann v. Pack*, 527 S.W.2d 99, 107 (Tenn. 1975) (stating that Tenn. Const. art. I, §3 "contains a substantially stronger guaranty of religious freedoms"); *Carden v. Bland*, 288 S.W.2d 718, 721 (Tenn. 1975)(stating that art. I, § 3 of the Tennessee Constitution is "broader and more comprehensive in its guarantee of freedom of worship and freedom of conscience"). Nonetheless, the Tennessee Supreme Court has never articulated a higher degree of protection or more expansive protection than that of the First Amendment. *Commissioner of Transportation v. Medicine Bird Black Bear White Eagle*, 63 S.W.3d 743, 761 (Tenn. Ct. App. 2001). Instead, the Court has applied the same standards and used the same principles as those used to interpret the First Amendment's Free Exercise Clause. *Id.* We will do the same.

religious organization[6] on questions of discipline, faith, or ecclesiastical rule, custom, or law and will not interfere with such decisions. The ecclesiastical abstention doctrine prohibits secular courts from redetermining the correctness of a decision by a religious tribunal on issues of canon law, religious doctrine, or church governance. *Milivojevich*, 426 U.S. at 710. "The Constitution forbids secular courts from deciding whether religious doctrine or ecclesiastical law supports a particular decision made by church authorities." *Drevlow v. Lutheran Church Missouri Synod*, 991 F.2d 468, 470-71 (8th Cir. 1993); *Scharon v. St. Luke's Episcopal Presbyterian Hospital*, 929 F.2d 360, 363 (8th Cir. 1991).

Because of the freedom of religion guaranteed in the Constitution, religious organizations may establish their own rules and regulations for internal discipline and government and create tribunals for adjudicating disputes over these matters. *Milivojevich*, 426 U.S. at 724. When this choice is exercised, the Constitution requires that civil courts accept such tribunals'

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[6]Although the United States Supreme Court's statements regarding ecclesiastical abstention speak in terms of hierarchical church organizations, there is no reason to refuse to apply the First Amendment analysis to congregational churches or those religious organizations not hierarchical in structure. *See Heard v. Johnson*, 810 A.2d 871,879 n.4 (D.C. Circ. 2002); *Burgess v. Rock Creek Baptist Church*, 734 F.Supp. At 31 n. 2; *Callahan v. First Congregational Church of Haverhill*, 808 N.E.2d 301, 308 (Mass. 2004); *Guinn v. The Church of Christ of Collinsville*, 775 F.2d 766, 771 n.18 (Okla. 1989). Where, as in the case before us, the religious body has adopted a hierarchical policy, it is not necessary to examine the application of the doctrine in other types of organization.

decisions as binding. *Id.* 426 U.S. at 709.[7] Decisions of the highest church tribunal are binding on civil courts in "all cases of ecclesiastical cognizance." *Watson*, 80 U.S. at 729. Claims that a religious tribunal or organization violated its own rules are not reviewable by courts. *Drevlow*, 991 F.2d at 470-71; *Travers v. Abbey*, 58 S.W. at 248 (stating that whether the proceedings were irregularly conducted was a question for church authorities, not the courts).

Non-intervention in intrachurch disputes is also based on the voluntary nature of membership in religious organizations. In the United States people have an unquestioned right to form voluntary religious associations and to organize the governance of their congregation in whatever way they deem appropriate. *Watson*, 80 U.S. at 728-29. By joining such organizations, individuals consent to their governing structures and bind themselves to submit to the organization's rules. *Id.*

> But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical

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[7] "[T]he First and Fourteenth Amendments mandate that civil courts shall not disturb the decisions of the highest ecclesiastical tribunal within a church of hierarchical polity, but must accept such decisions as binding on them, in their applications to the religious issues of doctrine or polity before them." *Milivojevich*, 426 U.S. at 709.

> cognizance, subject only to such appeals as the organism itself provides for.

Watson, 80 U.S. at 729. If secular courts were to become embroiled in ecclesiastical controversies within a religious body, those courts would be allowed, or required, to substantiate their judgment for tat of church governing bodies on issues of doctrine, belief, or practice.

While the First Amendment's prohibition on civil or secular courts deciding religious, ecclesiastical, or doctrinal disputes is absolute, that does not mean that religious organizations are immune from all suits. The abstention doctrine itself applies only to issues that would require the courts to examine or determine questions of religious belief or practice. "[N]ot every civil court decision.... jeopardizes values protected by the First Amendment." *Presbyterian Church v. Mary Elizabeth Blue Hall Memorial Presbyterian Church*, 393 U.S. at 449. Consequently, religious organizations are subject to suit for many of their activities in the secular world, such as contracts with outside parties. Such suits do not involve questions of ecclesiastical cognizance.

Even where intrachurch disputes occur, as in the case before us, courts still have jurisdiction to decide some issues, as long as that resolution will not require the court to engage in extensive inquiry into religious law or doctrine. *Burgess v. Rock Creek Baptist Church*, 734 F.Supp. At 32 (stating that courts can adjudicate church disputes "under narrow circumstances.") Where a court can decide a dispute within a church without unduly entangling itself in matters of doctrine or essentially religious questions, the First Amendment may permit a court to adjudicate the matter. *Milivojevich*, 426 U.S. at 710.

For example, where resolution of an intrachurch property dispute does not risk the prohibited court entanglement and involved only nondoctrinal matters, courts may decide such controversies. In doing so, they apply "neutral principles of law" developed for use in all property disputes. *Jones v. Wolf*, 443 U.S. 595, 604 (1979) (holding that a state is constitutionally entitled to adopt neutral principles of law as a means of adjudicating a church property dispute so long as there no need to examine a church's ecclesiastical polity or doctrine); *Presbyterian Church v. Mary Elizabeth Hall Memorial Presbyterian Church*, 393 U.S. at 449 (holding that the state has a legitimate interest in adjudicating disputes over church property but may only use neutral principles of law).

The neutral principles approach, created originally to deal with church property disputes, has been used by courts in other types of cases involving civil rights. Tennessee courts have exercised jurisdiction over actions arising from intrachurch disputes when other civil or property rights are involved. *Ward v. Crisp*, 226 S.W.2d 273, 275 (Tenn. 1949) (involving construction of trust on church property); *Crenshaw v. Barbour*, 162 Tenn. 235, 241, 365 S.W.2d 87, 90 (1931); *Rodgers v. Burnett*, 65 S.W. 408, 410 (1910). Nonetheless, they have been careful in those cases to decide only the issues dealing with the civil or property right involved using neutral principles of land. *Landrith v. Hudgins*, 120 S.W. 783, 807 (Tenn. 1908); *Nance v. Busby*, 18 S.W. at 879; *Fairmont Presbyterian Church, Inc. v. Presbytery of the Holston of the Presbyterian Church of the United* States, 531 S.W.2d 301, 306 (Tenn. Ct. App. 1975).

Regardless of the cause of action asserted, or the label given it by a plaintiff, the question is whether resolution of the claims would require that the courts become involved in

ecclesiastical matters. The neutral principles doctrine "has never been extended to religious controversies in the areas of church government, order and discipline, nor should it be." *Hutchinson v. Thomas*, 789 F.2d 392, 396 (6th Cir. 1986). Courts presiding over church disputes must be careful not to violate the protections of the First Amendment by deciding who prevails on the basis of resolution of the underlying controversy over religious doctrine and practice. *Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church,* 393 U.S. 440 (holding that if intrachurch property dispute required interpreting and weighing church doctrine, a court could not intervene; if, however, neutral principles of law could be applied without determining underlying question of religious doctrine and practice, a court could intervene); *Burgess v. Rock Creek Baptist Church.* 734 F.Supp. at 31.

For example, even disputes over church property between rival factions within a religious organization may create the danger that the State, through the court, will determine the rights to the property on the basis of the doctrinal beliefs or interpretations espoused by each party. *See Milivojevich*, 426 U.S. at 709. Even where property rights are involved, judicial intervention is still prohibited where courts would be called upon to resolve underlying disputes over religious doctrine or practice. *Id.*, 426 U.S. at 709-10 (holding that because rights to church property were tied to decisions over bishop defrocking, courts could not decide property rights without deciding the underlying religious disputes, which was prohibited); *Natal v. Christian and Missionary Alliance*, 878 F.2d 1575, 1577 (1st Cir. 1989); *Hutchison v. Thomas*, 789 F.2d at 396. *See also Jones v. Wolf*, 443 U.S. at 602 (1979) ("the First Amendment prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice"). The First Amendment "commands civil courts to

decide church property disputes without resolving underlying controversies over religious doctrine." *Presbyterian Church v. Mary Elizabeth Blue Hull Mem. Presbyterian Church*, 393 U.S. at 449.

In a case involving both ownership of church property and the excommunication of one faction of a church by another, the Tennessee Supreme Court explained the difficulties courts would confront if they were to deal with matters of religious doctrine or church governance in the name of deciding other rights:

> . . .the whole subject of the doctrinal theology, the usages and customs, the written laws and fundamental organization of every religious denomination must be examined into with minuteness and care, for they would become, in almost every case, the criteria by which The validity of the ecclesiastical decree would be determined in the civil court. This principle would deprive these bodies of the right of construing their own church laws . . . and would in effect, transfer to the civil courts, where property rights were concerned, the decision of all ecclesiastical questions.

Nance, 18 S.W. at 880. While, as a practical matter, it can sometimes prove difficult to distinguish between disputes that can be resolved by neutral principles of law and those that may involve the court in "excessive entanglement" with matters of religious doctrine and organizations, courts must make that distinction so as to avoid inquiry prohibited by the First Amendment.

Based on the foregoing, it is clear that the first question in the case before us is whether the claims raised by Mr and Mrs. Anderson can be adjudicated without inquiry into the religious doctrine and practice of the Jehovah's Witnesses and without resolution of underlying religious controversies. *Abrams v. Watchtower Bible and Tract Society of New York, Inc.*, 715 N.E.2d 798, 802 (Ill.Ct. App. 1999); *O'Connor v. Diocese of Honolulu*, 885 P.2d 361, 367 (Haw. 1994).

We undertake our examination with the understanding that "when the First Amendment casts a shadow over the court's subject matter jurisdiction, the plaintiff is obliged to plead unqualified jurisdictional facts that clearly take the case outside the constitutional bar." *Heard v. Johnson*, 810 A.2d at 882, *quoting Bible Way Church of Our Lord Jesus Christ of the Apostolic Faith v. Beards*, 680 A.2d 419, 430 (D.C. Cir. 1996), *cert. Denied*, 520 U.S. 1155 (1997); *see also Litica Corp. V. Sweetheart Cup Co.*, 790 F. Supp. 702, 706 (E.D. Mich. 1992) ("courts have required greater specificity in pleading where the case implicates conduct which is *prima facie* protected by the First Amendment."). Once challenged, the burden of establishing subject matter jurisdiction rests on the party asserting the jurisdiction. *Thomason v. Gaskill*, 315 U.S. 442 (1942).

V. CHURCH MEMBERSHIP DISPUTES

Most of the Andersons' claims stem from their disfellowshipping and the manner in which they were deprived of their memberships in the Jehovah's Witnesses. They allege the disfellowshipping itself was wrongful, and most of their other claims are based on consequences directly related to or flowing from that action. We begin with the fundamental issue of the Andersons' expulsion from the Congregation and their

claims that this expulsion was wrongful.

The Church argues that the freedom of religious bodies to determine their own membership is such a fundamentally ecclesiastical matter that courts are prohibited from adjudicating disputes over membership or expulsion. We agree.

Because religious bodies are free to establish their own guidelines for membership and a governance system to resolve disputes about membership without interference from civil authorities, decisions to exclude persons from membership are not reviewable by civil courts. Courts will not interfere with the "fundamental ecclesiastical concern of determining who is and who is not a member." *Burgess v. Rock Creek Baptist Church*, 734 F.Supp. at 33. Membership is necessarily ecclesiastical in nature because it defines the centralizing beliefs of the organization, and the First Amendment bars courts from reviewing decisions by church tribunals on whether a particular person should be admitted, expelled, or denied membership. *Abrams v. Watchtower Society*, 715 N.E. 2d at 803. That has long been the rule. "We cannot decide who ought to be members of the church, nor whether the excommunicated have been justly or unjustly, regularly or irregularly cut off from the body of the church." *Shannon v. Frost*, 42 Ky. (3 B. Mon.) 253, 258 (1842).

In *Watson v. Jones, supra,* the United States Supreme Court listed some examples of matters over which the civil courts exercise no jurisdiction and which are exclusively within the power of a church body to decide, including "the conformity of the members of the church to the standard of morals required of them." *Watson v. Jones*, 80 U.S. at 733. The Court clearly rebuffed any idea that civil or secular courts

should hear attacks on a church tribunal's decision in such matters. *Id.*, 80 U.S. at 733-34. If the courts were to inquire into allegations that the church tribunal exceeded its authority or did not follow church law or similar claims, then

> the whole subject of the doctrinal theology, the usages and customs, the written laws, and fundamental organization of every religious denomination may, and must, be examined into with minuteness and care, for they would become, in almost every case, the *criteria* by which the validity of the ecclesiastical decree would be determined in the civil court. This principle would deprive these bodies of the right of construing their own church law . . .

Id., 80 U.S. at 733.

The First Amendment prohibits court review of a church's decision to expel a member. *See, e.g., Glass v. First United Pentecostal Church of DeRidder*, 676 S.2d 724, 728 (La. App. 1996) (holding that court had no jurisdiction over expulsion from church based on tenet against suits among members); *Crosby v. Lee*, 76 S.E.2d 856, 859 (Ga. App. 1953) (holding that questions relating to the faith and practice of members belong to the church judicatories, to whose ecclesiastical jurisdiction members have voluntarily subjected themselves). A church decision as to the status of a person's church membership is binding and not subject to review, reconsideration, or reversal by a court. *Fowler v. Bailey*, 844 P.2d 141, 145 (Okla. 1992).

In *Serbian Eastern Orthodox Diocese v. Milivojevich, supra,* the United States Supreme Court reversed a lower

court's setting aside a church decision to defrock a bishop because the lower court's judgment

> rest[ed] upon an impermissible rejection of the decisions of the highest ecclesiastical tribunals of this hierarchical church upon the issues in dispute, and impermissibly substitut[ed] its own inquiry into church policy and resolutions based thereon of those disputes.

Milivojevich, 426 U.S. at 708. The same would be true of a court adjudication of a former member's expulsion from the church.

Stated another way, expulsion from a religious society is not a harm for which courts can grant a remedy. *Grunwald v. Bornfreund*, 696 F. Supp. 838, 840-41 (E.D.N.Y.1988). Church disciplinary or expulsion proceedings cannot be reviewed by courts for the purpose of granting reinstatement or other relief. *Fowler v. Bailey*, 844 P.2d at 144. The Tennessee Supreme Court determined long ago that a member of a religious organization who had been excommunicated was without remedy in the State courts. *Nance v. Busby*, 18 S.W. at 881. Our courts have continued to hold that a church's decision as to who should be granted or allowed to maintain membership is not subject to review by the courts. *See, e.g., Martin v. Lewis*, 688 S.W.2d at 74; *Bentley v. Shanks*, 348 S.W.2d at 904. The long established rule is that courts "will not intermeddle or interfere with the internal administration of the affairs of the church, such as disciplinary cases, cases involving the exscinding of members, and the administration of rules and ordinances and the like, where the ecclesiastical body acting, or undertaking to do so, is clothed with the power and jurisdiction to act in the matter . . ." *Cannon v. Hickman*, 4

Tenn. App. 588, 591 (Tenn Ct. App. 1927), *citing Landrith v. Hudgins*, 120 S.W. at 807.

As the United States Supreme Court has made clear in *Watson v. Milivojevich*, those who voluntarily join a religious organization consent to its rules and governance structure, and to allow such persons to appeal to secular courts would subvert religious bodies and render the consent of members meaningless. By deferring to the highest judicatory of a religious body, courts also defer to the choice made by church members who voluntarily jointed the body and agreed to its rules and governance.

Because of the inherently ecclesiastical nature of membership decisions, disputes over membership are not subject to the "neutral principles" doctrine. *Burgess v. Rock Creek Baptist Church*, 734 F.Supp. At 32. The neutral principles doctrine "has never been extended to religious controversies in the areas of church government, order and discipline, nor should it be." *Hutchison v. Thomas*, 789 F.2d at 396. Further, membership in a church or religious organization is not a property or civil right that would make available use of neutral principles of law. *Fowler v. Baily*, 844 P.2d at 144-45.

Tennessee recognizes no cause of action for wrongful expulsion from a religious organization. Our courts will not review such decisions, but will take as binding the decision of the church. A party aggrieved by such action has no redress in the courts, but must look instead to the organization itself. *Martin v. Lewis*, 688 S.W.2d at 74; *Bentley v. Shanks*, 348 S.W.2d at 904. Otherwise, courts would be called upon to determine the correctness of a church's decision about whether a person had complied with religious doctrine and practices. That is exactly the kind of inquiry the First Amendment

prohibits. *Milvojevich*, 426 U.S. at 710. By its very nature, the inquiry as to the correctness of or circumstances surrounding a church's decision on membership "plunges an inquisitor into a maelstrom of Church policy, administration, and governance" and is barred by the First Amendment. *Natal v. Christian & Missionary Alliance*, 878 F.2d at 1578.

Consequently, we find there is clear and controlling authority that Tennessee courts have no authority to decide questions of membership or the correctness of expulsion from membership. In 1892, our Supreme Court stated it had found "no reported case where any civil court in this country has undertaken to overrule the fact of excommunication upon any ground whatever." *Nance v. Busby*, 18 S.W. at 89. We have also found no cases, in this jurisdiction or elsewhere, where a court exercised jurisdiction to adjudicate whether a church member was wrongfully expelled.

VI. ARGUMENTS THAT ABSTENTION DOCTRINE SHOULD NOT APPLY

While acknowledging that the ecclesiastical abstention doctrine limits the power of the courts to adjudicate intrachurch disputes, the Andersons argue that they have carefully worded the allegations in their complaint so as to avoid application of the doctrine in this case. They assert that the Church's actions in disfellowshipping them were fraudulent and taken for secular reasons and that the abstention doctrine is subject to an exception for fraud. Additionally, they argue that they are not challenging the validity of any Jehovah's Witness doctrine or practice, but, rather, are asking the courts to decide whether the Church's proffered religious reason actually motivated their disfellowshipping or was merely a pretext. We begin with the second argument.

A. Pretext

To determine whether the reasons given by the Church for the expulsion were pretextual, a court would necessarily have to inquire into the correctness of the disfellowshipping and whether it was consistent with the Church's religious doctrine and internal policies. This is an inquiry the courts cannot make because it would result in excessive inquiry into ecclesiastical matters in contravention of the First Amendment. Where the church decision at issue is purely and fundamentally ecclesiastical in nature, "attempts to separate arguably impermissible discriminatory grounds for a decision from grounds stemming from church beliefs excessively entangles a court with religion." *Van Osdol v. Vogt*, 908 P.2d 1122, 1132 (Colo. 1996).

Regardless of the basis of the attack, courts cannot examine the correctness of a decision to expel a member. This is true when the claim is that the church violated its own rules or bylaws. *See Drevlow v. Lutheran Church, Missouri Synol*, 991 F.2d at 470-71; *Natal v. Christian and Missionary Alliance*, 878 F.2d at 1577 (holding that an allegation that church did not follow its own rules in discharging minister from employment was unavailing); *Martin v. Lewis*, 688 S.W.2d at 72 (reversing a trial court's judgment invalidating a vote on membership that had been based on a finding that the vote had been taken not in compliance with church law and was arbitrary). Thus, even if an expulsion or disciplinary proceeding is irregular, the church's decision is not reviewable. *Fowler v. Baily*, 844 P.2d at 145.

Similarly, courts cannot review the fairness or correctness of a decision to expel someone from church membershi8p. *Burgess v. Rock Creek Baptist Church*, 734

F.Supp. at 33. The ecclesiastical abstention doctrine prohibits secular courts from redetermining the correctness of a decision by a religious tribunal on issues of canon law, religious doctrine, or church governance. *Milivojevich*, 426 U.S. at 710. "The Constitution forbids secular courts from deciding whether religious doctrine or ecclesiastical law supports a particular decision made by church authorities." *Drevlow v. Lutheran Church, Missouri Synod*, 991 F.2d at 470-71.

An argument that the religious reasons given were a mere pretext for some other reason asks that the court determine that the proffered religious reasons have no basis. It is clear that courts are precluded from making an inquiry that would lead to such a determination. The church decision at issue in this case is the decision to expel members, a decision protected from court review. The charges brought by the church against Ms. Anderson included apostasy, disrupting the unity of the congregation, and undermining confidence in the church's governance. The Andersons do not argue these allegations, if true, are not a reason for disfellowsipping. Whether or not Ms. Anderson's conduct merited expulsion is a question to be answered by the church to whose governance she voluntarily submitted herself. Courts cannot review the church's decision.

Where purely ecclesiastical and protected actions are involved, inquiring into pretext "inevitably encourages sophistry and leads a court nowhere. Once the church states that the decision was, even in part, doctrinal, then the court would either have to invoke the First Amendment and cease inquiry or enter into the impermissible activity of analyzing church doctrine and perhaps weighing the importance of a particular area of the doctrine." *Van Osdol*, 908 P.2d at 1128. Thus, no pretext inquiry is permitted.

In *Davis v. Church of Jesus Christ of Latter Day Saints*, 852 P.2d 640 (Mont. 1993), *overruled on other grounds. Giko v. Permann*, 130 P.3d 155 (Mont. 2006), the plaintiff asserted the church attempted to pressure her into disadvantageously settling a claim against the church (involving person injury based on premise liability) by, *inter alia*, threatening to excommunicate her and denying her Temple Recommend and other denominational status. The court held that those matters could not be evaluated without inquiry into the beliefs and practices of the church. *Id.* At 647-648. The court found that in order to determine if the denials were appropriate, it would have to determine whether there had been a deviation from church doctrine and whether the denial was "rooted in religious belief." Int eh last analysis, the court was being called on to "determine the religious basis for an ecclesiastical decision," and found that to be an intrusion into religious matters prohibited by the First Amendment. 852 P.2d at 648. We agree with the reasoning in both *Davis* and *Van Osdol*. Accordingly, an examination of the reasons for the expulsion is prohibited by the First Amendment.

The Andersons rely on several cases to support their argument that the courts can determine whether the reasons given by the Church for their disfellowshipping were pretextual. The cases cited, however, are inapplicable. They are employment cases that deal with claims of illegal employment discrimination by religious organizations. *See Geary v. Visitation of the Blessed Virgin Mary Parish School*, 7 F.3d 324 (3rd Circuit 1993) (parochial school's assertion that it had terminated employment of lay teacher for religious reasons did not insulate it from court inquiry into whether the purported religious reasons were merely a pretext for age discrimination); *Ohio Civil Rights Commission v. Dayton Christina Schools*, 477 U.S. 619, 628 (1986) (involving

teacher's discharge by a religious school and the state civil rights commission's authority to investigate the teacher's claim of sex discrimination); *DeMarco v. Holy Cross High School*, 4 F.3d 166 (2d Cir. 1993) (allowing a pretext hearing for a lay teacher's claim of discrimination); *Bassinger v. Pilarczyk*, 707 N.E.2d 1149 (1997) (holding court could determine factual question of whether proffered religious reason for termination of employment of teacher was pretext for age discrimination).

The Andersons' claims do not involve employment action by the Church, nor do they involve statutorily protected employment rights, such as non-discrimination on the basis of age, gender or race.[8] Consequently, much of the analysis in the cited cases simply does not apply to the case before us. In employment discrimination cases, the burden-shifting analysis includes a pretext component. *See McDonnell Douglas Corp. V. Green*, 411 U.S. 792 (1973). Thus, where the statue could be applied without violating Constitutional protections, the issue of pretext was before the courts in the cited cases. That analytical framework does not apply herein.

Further, the cases relied on by the Andersons dealt with lay employees, and the statutes at issue in those cases have been applied to religious organizations only when dealing with lay

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[8]In cases involving the application of a statute to a religious organization, courts generally analyze whether the statute may be applied without violating the Establishment Clause by using a three-prong test: (1) whether the statute has a secular purpose, (2) whether its purpose or primary effect neither advances nor inhibits religion, and (3) whether it fosters an excessive government entanglement with religion. *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971); *DeMarco v. Holy Cross High School*, 4 F.3d at 168; *Geary v. Visitation of the Blessed Virgin Mary Parish School*, 7 F.3d at 328; *Dolquist v. Heartland Presbytery*, 342 F. Supp. 2d 996, 1001 (D. Kansas 2004).

employees. As general rule, religion-neutral statutes prohibiting specific types of discrimination can be applied to religious organizations where the dispute is about employees in non-pastoral jobs. *Heard v. Johnson*, 801 A.2d at 880. The cases cited by the Andersons are inapposite to disputes arising from clearly ecclesiastical decisions. *See Minker v. Baltimore United Methodist Church*, 894 F.2d 1354, 1358 (D.C. Cir. 1990).

Courts have recognized the distinction between the constitutionally-protected area of employment of ministers, which is purely ecclesiastical, and the secular activities of religious organizations as employers of other types of employees. In the situation of employees without pastoral or religious duties, employment disputes can be decided without intrusion into matters of religious belief or practice. *See Young v. The Northern Illinois Conference of United Methodist Church*, 21 F.3d 184, 186 (7th Cir. 1994) (holding that Title VII may apply to religious organizations, but not to matters touching the relationship between church and its ministers).

There is a different rule for ministers, and employment decisions affecting those with pastoral responsibilities are not subject to court review. *See Dolquist v. Heartland Presbytery*, 343 F. Supp.2d 996, 1002 (D. Kansas 2004) (listing the federal circuits that had found that the First Amendment protects churches from employment claims by ministers). It has been uniformly held that decisions as to hiring or firing of pastors, as well as other issues regarding minister employment, are protected from court inquiry because such decisions necessarily involve questions of religious practice or governance. *Kedroff v. St. Nicholas Cathedral of the Russian Orthodox Church in North America*, 344 U.S. at 116 ("Freedom to select the clergy . . . must now be said to have federal constitutional protection

as a part of the free exercise of religion against state interference"); *Werft f. Desert Southwest Annual Conference of United Methodist Church*, 377 F.3d 1099, 1104 (9th Cir. 2004) (holding that a minister's Title VII claims based on failure to accommodate his disability involved the employment relationship between church and minister and is therefore barred); *Bell v. Presbyterian Church*, 126 F.3d 328, 331(4th Cir. 1997) ("It has thus become established that the decisions of religious entities about the appointment and removal of ministers and persons in other positions of similar theological significance are beyond the ken of civil courts"); *Minker v. Baltimore Annual Conference of United Methodist Church*, 894 F.2d at 1357 (stating "whose voice speaks for the church is *per se* a religious matter) and finding that every court confronting a ;minister employment dispute has held that such decisions must be left to ecclesiastical institutions); *Hutchison v. Thomas*, 789 F.2d at 396 (declining to assert jurisdiction over dispute about plaintiff's employment as a minister); *McClure v. Salvation Army*, 460 F.2d 553, 558-60 (5th Cir. 1972) (showing that minister's assignment is a matter of church governance and not subject to court review because "[m]atters touching [the relationship between a church and its ministers] must necessarily be recognized as of prime ecclesiastical concern"); *Kaufmann v. Sheehan*, 707 F.2d 355, 358-59 (8th Cir. 1983); *Simpson v. Wells Lamont Corp.*, 494 F.2d 490, 492 (5th Cir. 1974); *Van Osdol v. Vogt*, 908 P.2d at 1126 (holding that minister choice is inextricably related to religious belief and "[t]he choice of a minister is a unique distillation of a belief system." *Natal v. The Christian and Missionary Alliance*, 878 F.2d at 1578; *Mason v. Winstead*, 265 S.W.2d at 563.

Because of the First Amendment, courts are precluded from inquiring into the reasons behind pastoral employment decisions. *See Dolquist v. Heartland Presbytery*, 342 F.Supp.

at 1002-1003 (listing decisions). In minister choice cases, including those brought as employment discrimination claims, courts have declined to undertake an examination of the proffered reasons for the challenged church action. *See, e.g., EEOC v. Catholic University of America*, 83 F.3d 455, 461-64 (D.C. Cir. 1996) (holding that in minister employment, reasons for the decision need not be ecclesiastical in nature but only related to pastoral employment and inquiring into reasons would involve excessive entanglement with religion). In *Minker v. Baltimore Annual Conf. Of United Methodist Church, supra*, the court held that it need not find that the factors relied on by the church were ecclesiastical in nature, but only need find that they were related to a pastoral appointment determination. *Minker*, 894 F.2d at 1357. A church may "adopt its own idiosyncratic reasons for appointing pastors." *Id. See also, Bollard v. California Province of the Society of Jesus*, 196 F.3d 940, 946 (9th Cir. 1999) (stating that requiring a church to articulate a religious reason for a minister employment decision is an unconstitutional interference with religion).

A church need not proffer any religious justification for its employment decisions regarding ministers because the First Amendment "protects the act of a decision rather than the motivation." *Rayburn v. General Conference of Seventh-Day Adventists*, 772 F.2d 1164, 1169 (4th Cir. 1985); *see also Rosati v. Toledo Catholic Diocese*, 233 F. Supp.2d 917, 922 (N.D. Ohio 2002); *Young v. The Northern Illinois Conference of United Methodist Church*, 21 F.3d at 186. Once it is determined that the decision at issue is protected from court review, the nature of the claim attacking that decision is irrelevant. *Alicea-Hernandez v. Catholic Bishop of Chicago*, 320 F.3d 698, 703 (7th Cir. 2003).

The basis for all the Andersons' claims is the decision of the Church to disfellowship them, which, as explained earlier, is clearly an ecclesiastical matter. Therefore, their case is similar to the cases involving church decisions about minister employment, not to cases involving lay employees. In terms of their fundamental core, ecclesiastical nature, church membership decisions are equivalent to and as important as minister choice.

> While the religious principles that a church espouses and the minister or priest and other officials who "govern" are certainly important, an indispensable part of any church is the collection of individuals who have joined together in worship and constitute the church's membership.

Burgess Rock Creek Baptist Church, 734 F. Supp. At 33 (holding that, for the same reasons courts do not interfere in minister choice disputes, it would not interfere with a decision on who is or is not a member of the church). *See also Kyritsis v. Vieron*, 382 S.W.2d 553, 559 (Tenn. Ct. App. 1964) (stating that the plaintiff's defrocking was "completely analogous to that of a member having been excommunicated").

Just as in the context of minister choice, courts cannot examine the proffered religious reason for expulsion from church membership in order to determine whether it is pretextual. With either type of decision, "[r]eligious bodies must be free to decide for themselves, free from state interference, matters which pertain to church government, faith and doctrine." *Natal v. Christian and Missionary Alliance*, 878 F.2d at 1577, *quoting Dowd v. Society of St. Columbans*, 861 F.2d 761, 764 (1st Cir. 1988). The church's decision on who

may be a member necessarily involves religious belief and church discipline. Even if non-religious reasons may be involved in the decision, those cannot be separated from a basic belief that a person no longer qualified to be a member. *See Van Osdol v. Vogt*, 908 P.2d at 1128-29 (involving minister choice decision).

Regardless of the bases for a claim that a membership decision was wrongful, persons excommunicated from their church must seek redress "in the congregation itself and not in the court." *Bentley v. Shanks*, 348 S.W.2d at 904. Since there is no cause of action in Tennessee for wrongful excommunication or disfellowshipping, courts have no basis upon which to examine the reasons for excommunication. Allowing a former member, who voluntarily joined a religious organization, to attack the church's decision on such a clearly ecclesiastical matter through allegations such as those made herein would involve the court in religious matters over which it has no jurisdiction. Thus, neither this court nor the trial court can make the determination of pretext that the Andersons request.

B. Fraud

The Andersons' fraud argument has its genesis in dictum from *Gonzalez v. Roman Catholic Archbishop of Manila*, 280 U.S. 1 (1929), wherein the Supreme Court, in expressing the *Watson v. Jones* rule stated, "[i]n the absence of fraud, collusion, or arbitrariness, the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive." 280 U.S. at 16. The Court has subsequently eliminated one of the listed grounds for an "exception," seriously called the other two into question, and

has yet to apply any of them.

In *Serbian Eastern Orthodox Diocese v. Milivojevich, supra*, the Court stated that the "fraud, collusion, or arbitrariness" exception to the Watson rule was dictum only and recognized that the implied exception had never been fully accepted by the Court, stating, "no decision of this Court has given concrete content to or applied to 'exception'." *Milivojevich*, 426 U.S. at 712. The Court specifically repudiated the arbitrariness ground because "recognition of ... an [arbitrariness] exception would undermine the general rule that religious controversies are not the proper subject of civil court inquiry." *Milivojevich*, 426 U.S. at 712-13.

> Indeed, it is the essence of religious faith that ecclesiastical decisions are reached and are to be accepted as matters of faith whether or not rational or measurable by objective criteria. Constitutional concepts of due process, involving secular notions of 'fundamental fairness' or **impermissible objectives**, are therefore hardly relevant to such matters of ecclesiastical cognizance.

Milivojevich, 426 U.S. at 714-15 (emphasis added). Arbitrariness was the only ground for an exception at issue in *Milivojevich*.

With regard to other parts of the "in the absence of" exception, the Court did not decide "whether or not there is room from 'marginal civil court review' under the narrow rubrics of 'fraud' or 'collusion' when church tribunals act in bad faith for secular purposes." *Milivojevich*, 426 U.S. at 713. Thus, the Supreme Court has never definitively endorsed a

fraud or collusion exception, but has merely left the issue open for possible later consideration. *Presbyterian Church v. Mary E. B. Hull Memorial Presbyterian Church*, 393 U.S. at 447 (stating that the Court may have left the door open for some "marginal civil court review of ecclesiastical determinations"); *Hutchison v. Thomas*, 789 F.2d at 395 (stating that Supreme Court did not endorse but merely "left for later consideration" any "marginal review" for fraud or collusion); *Abrams v. Watchtower Society*, 715 N.E. at 803 (stating that *Milivojevich* merely left open the possibility that *limited* review might be available in cases of fraud or collusion).

Other plaintiffs have attempted to avoid the ecclesiastical abstention doctrine by alleging their claims fell within the fraud or collusion exception. We have found no case in which a court has attempted to adjudicate a religious dispute on the basis of that exception. To the contrary, courts have refused to find such an exception either viable or applicable. For example, in *Hutchison v. Thomas, supra*, a case in which a minister challenged his forced retirement, the Sixth Circuit questioned whether a fraud or collusion basis for interfering in religious decisions even existed. 789 F.2d at 395. Assuming without deciding that it did, the court held that such an exception would allow court review "only . . . for fraud or collusion of the most serious nature undermining the very authority of the decision-making body." *Id.* The court found there was no showing of such "egregious" action by church authorities as to justify court interference. *Id. See also Heard v. Johnson*, 810 A.2d at 881 (finding no extraordinary circumstances to warrant application of a possible exception).

Where a claim is made that fraud or collusion justifies ignoring the First Amendment's prohibition on court interference in or review of religious decisions, the fact that the

decision being attacked is clearly and purely ecclesiastical argues against such an exception, because it would necessarily involve the court in the same type of analysis required to determine pretext, as discussed earlier. In the case before us, the Andersons claim of fraud or collusion attacks the Church's decision to disfellowship them. It is simply another way of claiming their expulsion from membership was wrongful. We find the reasoning of *Van Osdol v. Vogt, supra*, applicable and persuasive. In that case a minister sued a church organization alleging illegal retaliation in violation of Title VII in the church's decision not to hire her. The court found that the reasoning of *Milivojevich* regarding the impropriety of an arbitrariness exception applied equally to a fraud or collusion exception and explained:

> In order to determine whether a church employed fraudulent or collusive tactics in choosing a minister, a court would necessarily be forced to inquire into the church's ecclesiastical requirements for a minister. The First Amendment makes such inquiry into religious beliefs impermissible. *See Kaufmann v. Sheehan*, 707 F.2d 355, 358-9 (8th Cir. 1983) (finding that even though there may be some secular aspects to the priesthood, claims for fraud or collusion that relate to a person's status as a priest are unrelated to secular purposes but instead go to the heart of internal matters of faith and thus, no fraud or collusion exception is available); see also *Hutchison v. Thomas*, 789 F.2d 392, 395 (6th Cir.) (Refusing to find a fraud or collusion exception based on the firm policy protecting First Amendment rights that prohibits inquiry into ecclesiastical decisions

absent the most unusual circumstances.)

Van Austl. v. Vogt, 908 P.2d at 1133. This reasoning applies with equal force to a decision to expel a member. Evaluation of the stated reasons for an ecclesiastical decision, such as choosing a minister or expelling a member, would require the courts to inquire into the motives of the defendants to determine whether the decision was properly made. This type of evaluation, inquiry, or determination is prohibited. *Callahan v. First Congregational Church of Haverhill*, 808 N.E.2d 301, 312 (Mass. 2004).

The allegations made by the Andersons are similar to those presented in *Abrams v. Watchtower Society, supra*. In that case, a former member of a Jehovah's Witness congregation accused two of its elders of conspiring to remove him from the congregation and prevent his becoming a elder by procuring false testimony against him and by telling him he had no avenue of appeal. Mr. Abrams invoked the language of *Gonzales* and claimed that the defendants were guilty of "a conspiracy to defraud." The court ruled that "review of the alleged 'fraud' in the instant case would run counter to the principle of ecclesiastical abstention." *Abrams v. Watchtower Society*, 715 N.E. at 803. The court reasoned that maintenance of the suit would entail an extensive and forbidden inquiry into religious law and practice, or ecclesiastical administration and government, contrary to the prohibitions of the First Amendment. Court review of a church membership decision is, in an of itself, an "extensive inquiry" into religious law and practice, and, consequently, prohibited. Such an examination could produce, "by its coercive effect, only the very opposite of that contemplated by the First Amendment." *Id.*

We agree with the reasoning of the Illinois court. In

order to effectively review the Andersons' claim of fraud, we would have to decide not only whether false information was used to procure their expulsion from the organization, but whether they would have been expelled in the absence of such information. In the process, we would have to examine the reasons for which Jehovah's Witnesses might legitimately expel a member, and which reasons would not be legitimate, as well as the validity of the reasons given. Such an inquiry is prohibited and would involve us impermissibly in a purely ecclesiastical decision - who may or may not be a member of this religious organization. We also agree with the statement of the court in *Van Austl.* that the inherently ecclesiastical nature of the dispute "is logically inconsistent with a fraud or collusion exception to the First Amendment's bar on judicial review" of the Church's decision to disfellowship Ms. Anderson. 908 P.2d at 1134.

The Andersons assert that, regardless of the approach of other jurisdictions, Tennessee courts have recognized the fraud or collusion exception. In actuality, Tennessee courts have simply quoted the language from *Gonzalez v. Milivojevich* in cases where no such exception was even alleged. They have never attempted to further define it or applied it to allow inquiry into ecclesiastical matters.

Whether or not a fraud exception actually exists, the mere use of the word "fraud" in an allegations is not sufficient to avoid the ecclesiastical abstention doctrine. In Tennessee, the common law tort of fraud consists of an intentional misrepresentation of a material fact or producing a false impression in order to mislead another or to obtain an undue advantage over him; and, the misrepresentation must have been made with knowledge of its falsity and with a fraudulent intent, must be related to an existing fact which is material, and the

plaintiff must have reasonably relied on the misrepresentation to is injury. *Brown v. Birman Managed Care, Inc.*, 42 S.W.3d 62, 66-67 (Tenn. 2001). The Anderson's allegations do not meet these elements.

In fact, their claim attacks a membership decision by the church's governing bodies. No property rights are implicated since there is no right to belong to a particular religious organization in disregard of that organization's rules, governance, or desire. No other secular concerns are involved. The Andersons' claim that fraudulent means were used to have them excluded from church membership is simply a restatement of their allegation that the religious reasons given by the Church were a pretext and not the real reasons. Thus, the Andersons' claim is that Church officials disfellowshipped them for reasons other than their violation of the tenets of the Church, which is the same as saying the Church had "bad motives" or "impermissible objectives." As demonstrated in the earlier quotation from *Milivojevich*, that type of argument does not provide a basis for judicial review. *Milivojevich*, 426 U.S. at 715.

Church membership decisions are simply not subject to review by secular courts. Just as a direct challenge to the correctness of such a decision is beyond the authority of the courts to hear, courts are also precluded from considering indirect arguments that the decision was otherwise "wrongful." Accordingly, we conclude that the Andersons have failed to allege any basis for the court to ignore the First Amendment protections of the Church's decision to remove them from membership.[9]

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[9]For the same reasons no fraud exception applies herein, the Andersons' separate claim of common law fraud must be dismissed.

VII. CLAIMS RELATED TO DISFELLOWSHIPPING AND SHUNNING

Several of the Andersons' claims are based on direct results of their having been disfellowshipped and shunned. The Andersons state that they do not challenge the validity of any religious practice of the Church. However, they assert that church officials committed various state law torts "in the process of" wrongfully disfellowshipping them. Obviously, as even the Andersons acknowledge, most of their claims are closely linked to the disfellowshipping that they claim was wrongful and that we have determined we cannot review. That linkage is critical to our analysis of the subject matter jurisdiction questions.

As we stated above, the doctrines of the Jehovah's Witnesses and their reading of scripture require that their members ostracize individuals who have been disfellowhipped. While there is no question that this practice has resulted in a painful experience for the Andersons, the law does not provide a remedy fo such harm. For example, in other contexts, family members sometimes become estranged from each other for various reasons on their own volition, and the la does not recognize a basis for such for the pain caused by such estrangement. Courts are not empowered to force any individual to associate with anyone else. Subject to some exceptions nor applicable here, the Constitutional right of freedom of association permits individuals to associate with, or not to associate with, whomever they may wish. *Se Roberts v. U.S. Jaycees*, 468 U.S. 69, 618 (1984).

The Andersons do not directly challenge the practice of shunning and do not specifically rest any cause of action on that practice. However, many of the injuries for which they seek

relief are a direct result of the shunning. Shunning is religiously based conduct, a religious practice based on interpretation of scripture, and is subject to the protection of the First Amendment. *Paul v. Watchtower Bible and Tract Society of New York.* 819 F.2d 875 (9th Circuit 1987), *cert. Denied*, 484 U.S. 926 (1987); *Sands v. Living Word Fellowship*, 34 P.3d 955 (Alaska 2001). No tort liability can be imposed for shunning alone.[10]

The fundamental reason why the claims arising from shunning are not subject to judicial inquiry is that shunning is a part of the Jehovah's Witnesses belief system. Individuals who choose to join the Church voluntarily accept the governance of the Church and subject themselves to being shunned if they are disfellowshipped. The practice is so integrally tied to the decision to expel a member that it is beyond judicial review for the same reasons as the membership

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[10]In *Paul*, the Ninth Circuit recognized that, whether or not the religious conduct complained of would be otherwise tortious, the church defendants had "an affirmative defense of privilege - a defense that permits them to engage in the practice of shunning pursuant to their religious beliefs without incurring tort liability." 819 F.2d at 879. The court first examined the history of shunning amount the Jehovah's Witnesses and some earlier Christian groups and the scriptural rationale for ostracizing former members. The court found that the practice of shunning was an important part of the belief system of the Jehovah's Witnesses and was privileged religious expression protected by the Free Exercise Clause. *Id.* 819 F.2d at 883). The court then held that because the protected practice of shunning did not present a threat to public peace, safety or morality, state intervention by placing a direct burden on the free exercise of religion was not allowed. *Id.* In *Sands*, the court also applied the est for whether conduct is protected by the First Amendment an determined that the practice at issue was religiously based; that it did not pose a substantial threat to public safety peach or order, and that there was no competing state interest of the highest order at stake. Consequently, the shunning that was the basis of the suit was protected, and dismissal of the emotional distress claim was proper. 34 P.3d at 959.,

decision. Conduct that is inextricably tied to the disciplinary process of a religious organization is subject to the First Amendment's protection just as the disciplinary decision itself. *Callahan v. First Congregational Church of Haverhill*, 808 N.E.2d at 313-14. Thus, the religious practice of shunning does not, in and of itself, support a cause of action that is recognized by the courts.

The Andersons' claims of intentional infliction of emotional distress and interference with business relationships arise directly from or are a direct result of the shunning. The bar to review of the ecclesiastical decision to terminate a person's membership in a church extends to additional claims that derive from that decision or are inextricably linked to it. *Burgess*, 734 F. Supp. at 34 (holding that plaintiff's claims of outrageous conduct based on church's actions in preventing the plaintiff from exercising rights of members when she was no longer a member were inextricably linked to the claims that her membership was wrongfully terminated and thus not justiciable).

Regardless of the label given the claim by the plaintiffs, the question is whether a court must delve into ecclesiastical questions in order to resolve it. *Natal*, 878 F.2d at 1577. If the harm alleged is the direct result of a religious practice or decision that courts cannot examine, there is no remedy available in the courts for such harm. We think that is the situation with the two claims alleging harm directly caused by the disfellowshipping and shunning. Because the practice of shunning is not actionable in and of itself, its consequences do not provide a basis for a legal remedy, no matter what cause of action may be asserted.

In Tennessee, intentional infliction of emotional distress

is also called outrageous conduct. *Lyons v. Farmers Insurance Exchange*, 26 S.W.3d 888 (Tenn. Ct. App. 2000). To prevail on such a claim, the defendant's conduct must of a type that is so outrageous and extreme that it cannot be tolerated by civilized society and it must result in serious mental injury. *Bain v. Wells, 936 S.W.2d 618, 622 (Tenn. 1997); Medlin v. Allied Investment Co.*, 398 S.W.2d 270, 275 (Tenn. 1966).

Because the emotional distress alleged in this case arose from the disfellowshipping and concommitant shunning, to resolve this claim a court would need to examine the correctness of the disfellowshipping. This we cannot do. Since the conduct of Church officials in this case in fact arose from a constitutionally-protected religious practice and ecclesiastical decision, the courts cannot address the claim without violating the First Amendment. *See DeCorso v. Watchtower Bible and Tract Society of New York*, 829 A.2d 38 (Conn. App. 2003)(when church elders convinced woman to remain in abusive relationship with her husband, they did not commit either negligent or intentional infliction or emotional distress).[11] Since the alleged distress was a result of actions that are inextricably part of the church's membership proceedings, adjudication of this claim is precluded. *Callahan v. First Congregational Church of Haverhill*, 808 N.E.2d at 313.

According to the Amended Complaint, Joseph Anderson operated a plumbing business that was heavily dependent on repeat customers, many of whom were Jehovah's

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[11]There is a serious question as to whether the conduct complained of in this case rises to the level required to establish outrageous conduct. Since we have decided that this claim is not subject to court determination because it is inextricably related to and a consequence of the membership decision, we need not determine whether the allegations state a claim for relief.

Witnesses, and he also had prospective business relationships with other members. Being disfellowshipped had a detrimental impact on his business. He claimed that the defendants barred all Jehovah's Witnesses from patronizing his business out of an improper motive, resulting in a loss of income, and thus that they were guilty of the tort of interference with prospective business advantage.

The Supreme Court has only recently recognized a cause of action for tortious interference with business relationships. *Trau-Med of America, Inc. V. Allstate Insurance Co.*, 71 S.W.3d 691 (Tenn. 202)(overruling *Nelson v. Martin*, 958 S.W.2d 643 (Tenn. 1997)). The court described the elements of the tort as follows:

> (1) an existing business relationship with specific third parties or a prospective relationship with an identifiable class of third persons; (2) the defendant's knowledge of that relationship and not a mere awareness of the plaintiff's business dealings with others in general; (3) the defendant's intent to cause the breach or termination of the business relationship (4) the defendant's improper motive or improper means.

958 S.W.2d at 701

Obviously, a court could not determine whether the element of improper motive or means was present without examining the correctness or validity of the decision to disfellowship the Andersons. As explained earlier, such an examination is outside the jurisdiction of the courts. Further, the Jehovah's Witnesses enjoy a constitutionally-protected right

to direct their members to shun former members, and shunning by its nature necessarily precludes most business relationships between those who are in good standing with the church and those who are not. Thus, if the courts were allowed to enforce a remedy for economic damages that inevitably occur from shunning, they would be placing an impermissible burden upon a protected activity.

The Andersons' claims of emotional distress and interference with business relationships derive from the decision to expel them from membership and are inextricably linked to that decision. They are therefore, subject to the ecclesiastical abstention doctrine's bar.

VIII. BREACH OF FIDUCIARY DUTY

Ms. Anderson's breach of fiduciary duty claim alleges that, prior to her expulsion from the Church, she had reposed great trust and confidence in the Church's leaders "to provide advice on secular matters as well as spiritual guidance that would be in her best interest and the best interest of the faith" and that this trust created a fiduciary duty on the part of those leaders. She further alleges they breached this duty by failing to provide advice and counseling and, instead, taking action against her for the wrong reasons.[12] As a consequence, she

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[12]Ms. Anderson has alleged breach of a fiduciary duty, and that type of duty must arise from a fiduciary relationship as recognized in law. For a discussion of the differences between fiduciary relationship, confidential relationship, and special relationship, which also trigger some legal consequences, *see Berry v. Watchtower Bible and Tract Society of New York, Inc.*, 879 A.2d 1124, 1128-31 (N.H. 2005); *Richelle L. v. Roman Catholic Archbishop*, 130 Cal. Rptr.2d 601, 607-612 (Calif. Ct. App. 2003). Because we resolve this issue on the basis of subject matter jurisdiction, we need not examine whether the allegations made in the complaint establish

says, she suffered great emotional distress.

Analyzing the specific allegations, it is clear that they are simply another attack on the disfellowshipping. The alleged beach of duty was ;the "wrongful" disfellowshipping. Essentially, Ms. Anderson asks us to hold that a decision to expel someone from a church can constitute a breach of some legal duty owed to the expelled member, regardless of church officials' duty of loyalty to the church or obligation to follow the tenets of the church. In the circumstances of this case, we decline to do so and, in fact, are precluded from reaching such a conclusion. In order to examine where the official's duty lies, we would be required to resolve issues of church law and religious doctrine.

Because courts cannot review a church membership decision, which is inherently ecclesiastical, they cannot impose a remedy such as damages for tortious conduct on that decision. Additionally, we cannot second guess the Church's decision or inquire into its correctness under church law. That prohibition precludes examination of a claim that the Church's leaders were under a duty not to expel a member when the Church asserts the expulsion was based on its beliefs and practices. Finally, when examined closely, Ms. Anderson's underlying assertion is that her disfellowshipping was not in her best interest or that of the Church. Again, this is an issue not subject to resolution by civil courts. Ms. Anderson's breach of fiduciary duty claim must be dismissed for the same reasons the Andersons' wrongful disfellowshipping claims must be dismissed.

Ms. Anderson argues on appeal that breach of fiduciary

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a fiduciary relationship under Tennessee law.

duty "is commonly alleged against church clergy who take tortious action against their members for personal and secular purposes and against churches who try to cover up the tortious conduct." In actuality, few such claims have survived dismissal, and most arose in the context of an improper sexual relationship involving a pastor.[13] None arose from a decision to expel someone from a church.

Ms. Anderson cites only one case in which a claim for breach of fiduciary duty against church officials has survived early dismissal, *Moses v. Diocese of Colorado*, 863 P.2d 310 (Colo. 1993). That case involved a sexual relationship between a priest and a married woman who was known to be psychologically fragile. The bishop learned of the relationship, met with the woman, gave her absolution, and instructed her to tell no one of the affair except her husband. The woman later filed a suit which included claims for breach of fiduciary duty and negligent hiring and supervision. She claimed that under the pretext of counseling her, the bishop was actually acting to protect the career of the priest, did nothing to help her, and caused her to suffer severe psychological symptoms and the dissolution of her marriage.

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[13]The fact that defendant religious organization did not and could not assert that such improper sexual conduct was part of its religious beliefs or practices also distinguishes these cases from a dispute over such fundamentally ecclesiastical matters as church membership. *See, e.g., Doe v. Evans*, 814 So.2d 470 (Fla. 2002); *F. G. V. MacDonnell*, 696 A.2d 297 (N.J. 1997); *DeStefano v. Grabrian*, 763 P.2d 275 (Colo. 1988) (holding that claims could be considered because they arose from purely secular conduct and were not defended on the basis of a sincerely held religious belief or practice). In the case before us, the Church's decision to expel the Andersons is defended on the basis of religious tenets and is an essentially religious decision.

It is clear that the conduct involved in *Moses* had nothing to do with expelling a church member. The *Moses* court's discussion of whether the bishop owed a fiduciary duty to the plaintiff is nonetheless helpful to our discussion. The court in *Moses* first recognized that the relationship between a clergyman and parishioner was normally one involving trust and reliance, but further held that in order to be liable for a breach of fiduciary duty, the superior party must "assume a duty to act in the dependent party's best interest," *Moses*, 863 P.2d at 322, language which is parroted in Ms. Anderson's allegations. The *Moses* court also found, however, that there must be an assumption of duty and that "[o]nce a member of the clergy accepts the parishioner's trust and **accepts the role of counselor,** a duty exists to act with the utmost good faith for the benefit of the parishioner." *Moses*, 863 P.2d at 323 (emphasis added).

Cases examining a breach of fiduciary duty claim in the context of a religiously-based relationship have made it clear that the clergy-parishioner relationship alone is not sufficient to establish a fiduciary duty.[14] *See Ahern v. Kappalumakkel*, 903 A.2d 266, 270-71 (Conn. Ct. App. 2006) (listing and reviewing holdings on the issue). Simply being a member of a congregation does not create a fiduciary relationship with the clergy or other officials of that religious organization. *Berry v. Watchtower Bible and Tract Society of New York, Inc.*, 879 A.2d 1124, 1131 (N.H. 2005). There must exist "something more," *e.g.*, an additional or special relationship, usually that arising from formal counseling. *Ahern*, 903 A.2d at 198-99 (declining to find a *per se* fiduciary relationship between all

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[4]Because of our resolution of the issue, we need not examine whether the elders and other church officials named as defendants herein are clergy for purposes of clergy-parishioner relationship issues.

clergy and their congregants and requiring "something more" to demonstrate a justifiable trust on one side and resulting superiority and influence on the other).

In *Doe v. Hartz*, 52 F.Supp.2d 1027 (N.D. Iowa), the court dismissed the breach of fiduciary duty claim because the plaintiff simply alleged a clergy-parishioner relationship, not a counseling relationship. The court stated that "courts permitting breach of fiduciary duty claims against members of the clergy have . . . required something more than a priest-parishioner relationship." 52 F.Supp. At 1065. The plaintiff in *Doe* alleged that the parish priest "as a member of the clergy, had a [fiduciary] duty to act in her best interests." The court concluded that the priest's status as a clergyman was insufficient in and of itself to establish a fiduciary relationship.

Other courts have found a fiduciary relationship to exist, but only because a counseling relationship was shown to exist. *See, e.g., Sanders v. Casa View Baptist Church*, 134 F.3d 331, 337 (5th Cir.) (permitting breach of fiduciary duty claim against clergyman because the claims arose out of a counseling relationship, not just a clergy-parishioner relationship). The counseling relationship that has been found to be a pre-requisite must involve something other than, or additional to, spiritual advice and counsel. That is because courts have declined to impose a duty of care on religious or spiritual advisors in view of the problems and constitutional obstacles in establishing a standard of care and determining breaches of that standard. Such an exercise would necessarily involve judicial inquiry into the training, skills, and standards, including adherence to and interpretation of basic religious beliefs and practices, of many different religions and religious organizations. *Richelle L. v. Roman Catholic Archbishop*, 130 Cal. Rptr. At 608-09.

> Because of the differing theological views espoused by the myriad of religions in our state and practiced by church members, it would certainly be impractical, and quite possibly unconstitutional to impose a duty of care on pastoral counselors. Such a duty would necessarily be intertwined with the religious philosophy of a particular denomination or ecclesiastical teachings of the religious entity.

Nally v. Grace Community Church, 763 P2d 948, 960 (Cal. 1988). It is for these reasons that no court has recognized a common law tort cause of action for clergy malpractice.[15] For the same reasons, as well as others, the clergy-parishioner relationship does not, in and of itself involve a fiduciary relationship that creates a fiduciary duty recognized in law. Ms. Anderson has not alleged any special relationship beyond congregation member and congregation leaders.

A similar line of reasoning has reached the same result regarding allegations that church officials breached a fiduciary duty to a member. That reasoning was clearly set out in *Teadt v. Lutheran Church Missouri Synod*, 603 N.W.2d 816, 822-23 (Ct. App. Mich. 1999) (involving various tort claims arising out of sexual relationship between parishioner and minister), wherein the court quoted from *Langford v. Roman Catholic Diocese of Brooklyn*, 677 N.W.S.2d 436 (1998), as follows:

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[15] *See Dausch v. Ryske*, 52 F.3d 1425, 1432 n. 4 (7th Cir. 1994)(listing state cases rejecting such a cause of action); *Jacqueline R. V. Household of Faith Family Church, Inc.*, 118 Cal. Rptr. 264 (Cal. Ct. App. 2002); *F.G. v. McDonnell*, 696 A.2d 697, 703 (N.J. 1997); *Schieffer v. Catholic Archdiocese of Omaha*, 508 N.W.2d 907, 911 (Neb. 1993).

> [I]n order for [the] plaintiff's cause of action to meet constitutional muster, the jury would have to be able to determine that a fiduciary relationship existed and premise this finding on neutral facts. The insurmountable difficulty facing plaintiff, this court holds, lies in the fact that it is impossible to show the existence of a fiduciary relationship without resort to religious facts. In order to consider the validity of [the] plaintiff's claims of dependency and vulnerability, the jury would have to weigh and evaluate, inter alia, the legitimacy of [the] plaintiff's beliefs, the tenets of the faith insofar as they reflect upon a priest's ability to act as God's emissary and the nature of the healing powers of the church. To instruct a jury on such matters is to venture into forbidden ecclesiastical terrain.

677 N.Y.S.2d at 439.

The *Teadt* court found, similarly, that the plaintiff in that case could not establish the elements of a fiduciary relationship without resorting to the pastor-parishioner relationship. Religion was the foundation of the relationship and, consequently, her claims were essentially claims of clergy malpractice, which necessarily invoke free exercise protection. *Teadt*, 603 N.W.2d at 822-23. Similarly, in *Richelle L. v. Roman Catholic Archbishop, supra*, the court found that the plaintiff's claim that a confidential relationship existed with a pastor was based entirely on her piety and her assertion that she was a deeply religious member of the pastor's congregation, thereby rendering her vulnerable to him. The court held that such claims could not be adjudicated without reference to the

nature of her religious beliefs and the doctrine of her church. 130 Cal. Rptr.2d at 617. *See also Langford v. Roman Catholic Diocese of Brooklyn, supra* (holding that it was impossible to show a fiduciary relationship between the priest and the plaintiff on the basis alleged without resorting to religious questions).

Ms. Anderson's argument would imply that the church leaders had a duty not to exercise its governance against her, even though she had voluntarily agreed to be a member of the church, abide by its rules, and be subject to its governance. If we accepted Ms. Anderson's argument, we would have to hold that every sincerely believing Jehovah's Witness is in a fiduciary relationship with those who rank above them in the church hierarchy and, thus, that every decision to disfellowship a member would be subject to attack on the basis of breach of that relationship. For the reasons set out earlier, such an attack would involve an impermissible intrusion by the courts into the guarantees of religious freedom found in the First Amendment. The breach of fiduciary claim as alleged in this case is inextricably linked to the expulsion decision and is, therefore, protected from court inquiry by the First Amendment.

IX. DEFAMATION CLAIMS

Three of the Andersons' claims sound in defamation and allege that the defendants wrongfully disseminated information about them, resulting in unwarranted damage to their reputations. First, the Andersons make a claim for defamation to the congregation and base this claim solely on the fact that the elders of the Manchester congregation stated to its members that Barbara Anderson and Joseph Anderson had been disfellowshipped. Of course, those statements were true, but the plaintiffs contend that "the Defendants knew that the

congregation would understand this statement as tantamount to a statement that Plaintiffs had committed serious spiritual violations that warranted disfellowshipping and that they were unrepentant sinners; they also knew that, understood in this manner, the statements were false and defamatory."

The Andersons' other claims for defamation and for false light invasion of privacy are both based upon publication of information to the general public. They contend that remarks made by senior officials of the church to the media falsely implied that Ms. Anderson was guilty of immoral acts, thereby damaging her reputation.

The Church contends the ecclesiastical abstention doctrine or privilege shielded the defendants from any defamation claims. They argue in the alternative that even without the shield of ecclesiastical privilege, the trial court should have dismissed the defamation claim under Tenn. R. Civ. P. 12.02(6) for failure to state a claim.

A. Legal Principles

Courts faced with defamation claims by a church member or former member against the church or its officials have taken varying approaches in analyzing the claims.[16] Regardless of the analysis used, however, a majority of courts have held that defamation claims by church members against the religious organization itself and its officials are not justiciable under the Free Expression and Establishment

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[16]Some have applied common law or statutory privileges; some have examined the allegations for failure to state a claim under state law; and some have applied versions of the Establishment Clause test, the Free Exercise test, or a combination.

Clauses. 109 A.L.R.5th 541 § 2. *See also, Yaggie v. Indiana-Kentucky Synod Evangelical Lutheran Church in America*, 860 1194. 1199 (W.D. Ky. 1994) (noting "substantial federal authority" for declining jurisdiction over defamation claims against religious organizations).

In the context of the motion to dismiss for lack of subject matter jurisdiction based on the First Amendment's protection of ecclesiastical decisions, the most pertinent analysis is one that focuses on the nature of the claim in light of the prohibition on court entanglement in or interference with disputes that are fundamentally religious. Where religious belief or practice is implicated, some claims that could be adjudicated if they arose in a secular context are not subject to court intervention because they do not present the kind of compelling state interest to overcome freedom of religion concerns. *Minker*, 894 F.2d at 1357, citing *Gonzalez*, 280 U.S. at 16; *Heard v. Johnson*, 810 A.2d at 883. Imposing the burden of tort liability for engaging in church discipline proceedings must be balanced with the state's interest in allowing the civil claim. *Paul v. Watchtower Bible and Tract Society of New York, Inc.*, 819 F.2d at 881-83. Although some state restriction of activity by religious bodies, including court interference, is allowed, "only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion." *Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972).

> Under most circumstances, defamation is one of those common law claims that is not compelling enough to overcome First Amendment protection surrounding a church's choice of pastoral leader. When a defamation claim arises entirely out of a church's relationship with its

> pastor, the claim is almost always deemed to be beyond the reach of civil courts because resolution of the claim would require impermissible inquiry into the church's bases for its action.

Head v. Johnson, 810 A.2d at 883. The same reasoning applies to other purely ecclesiastical decisions.

The decision of who is or is not a member of a religious organization is, like minister choice, fundamentally a purely religious decision and enjoys the same protection from court review or intervention. Consequently, defamation and other tort claims arising entirely out of a decision to expel a member are generally beyond the jurisdiction of civil courts. *Hadnot v. Shaw*, 826 P.2d 978, 987 (Okla. 1992) (holding that church disciplinary or expulsion proceedings are not subject to civil court review, including claims of defamation arising from those disciplinary proceedings).

While religious organizations and their officials are not totally immune from liability for torts such defamation, *Masden v. Erwin*, 481 N.E.2d 1160 (Mass. 1985)(involving a defamation claim arising out of termination of an employee who had no pastoral duties), identification of the precise nature of the interests at stake and of the inquiry the courts would have to undertake is necessary.

A number of courts have held that defamation claims arising out of minister employment or discipline disputes are outside the subject matter jurisdiction of the courts because all matters touching the relationship between pastor and church are of ecclesiastical concern and not subject to court review, regardless of assertions that the statements at issue are not

based on religious doctrine or practice.[17] *Hutchison v. Thomas*, 789 F.2d at 396; *Yaggie v. Indiana-Kentucky Synod Evangelical Lutheran Church in America*, 860 F.Supp. At 1199; *Farley v. Wisconsin Evangelical Lutheran Synod*, 821 F.Supp. 1286 (D. Minn. 1993). The First Amendment protects matters arising from the pastor-church relationship from secular court inquiry and review, including defamation claims related to disciplinary or employment decisions. *Hiles v. Episcopal Diocese of Massachusetts*, 773 N.E.2d 929, 936 (Mass. 202). The same reasoning applies to defamation claims arising out of church disciplinary or expulsion proceedings involving a member, since the church-member relationship is a fundamentally ecclesiastical matter.

As the distinctions among the Andersons' claims would suggest, some courts have examined defamation claims arising out of church disciplinary or similar proceedings depending, in part, on the context of the challenged statements. "In cases involving defamation torts by church officials, Tennessee courts must look at whether the slanderous or libelous statements were made during the course of an ecclesiastical undertaking." *Ausley v. Shaw*, 193 S.W.3d 892, 859 (Tenn. Ct. App. 2005). Generally, disputes based on otherwise defamatory statements made in the context of a religious disciplinary proceeding are not resolvable by the courts. *Ausley v. Shaw*, 193 S.W.3d at 859; *Hiles v. Episcopal Diocese of Massachusetts*, 773 N.E.2d at 936 (holding that letter accusing minister of misconduct started and was an inextricable part of church's internal disciplinary procedure and, therefore, protected by the First Amendment).

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[17] The statements at issue in the case before us do contain references to religious beliefs and scriptures, so there is no question that ecclesiastical matters are at issue.

In *Bryce v. Episcopal Church in the Diocese of Colorado*, 289 F.3d 648 (11th Cir. 2002), the court held that statements, although perhaps offensive and incorrect, made at church meetings and in letters to church leaders discussing an internal church personnel matter and giving doctrinal reasons, fell squarely within the areas of church governance and doctrine protected by the First Amendment because the dispute was an ecclesiastical dispute about "discipline, faith, internal organization, or ecclesiastical rule, custom or law" and not a purely secular one. *Id.*, 289 F.32d at 648, *quoting Bell v. Presbyterian Church*, 126 F.3d 328, 331 (4th Cir. 1997). *See also Callahan v. First Congregational Church of Haverhill*, 808 N.E.2d at 313-14 (holding that statements made in an ecclesiastical complaint, investigation, and proceeding regarding the plaintiff who was excommunicated derived solely from actions that are inextricably part of the church disciplinary process and claims based on those statement were outside the jurisdiction of the courts).

In a membership expulsion situation, statements made within the congregation and based on ecclesiastical doctrine are protected by the guarantee of free exercise of religion. *Rasmussen v. Bennett*, 741 P.2d 755, 758-59 (Mont. 1987) (involving defamation claims by disfellowshipped members based on statements made as part of proceedings which the church defended as true according to church doctrine). "Within the context of ecclesiastical discipline, churches enjoy an absolute privilege from scrutiny by the secular authority," including claims of defamation during or arising from those disciplinary proceedings. *Hadnot v. Shaw* 826 P.2d at 987 (involving excommunicated member's claims regarding communication of the fact and cause of expulsion from membership).

> The right to express dissatisfaction with the disobedience of those who have promised to adhere to doctrinal precepts and to take ecclesiastically-mandated measures to bring wayward members back within the bounds of accepted behavior, are forms of religious expression and association which the First Amendment's Free Exercise Clause was designed to protect and preserve.

Guinn v. Church of Christ of Collinsville, 775 P.2d 766, 779 (Okla. 1989). As to internal disciplinary proceedings, courts will not dictate to a congregation or church officials that they may not freely speak their minds. *Yaggie v. Indiana-Kentucky Synod Evangelical Lutheran Church in America*, 860 F.Supp. At 1199.

When a person voluntarily joins a religious organization and submits to its governance, that person consents to the final decision by that organization's tribunals without recourse to civil courts. That consent includes consequences of church discipline that flow from the expulsion process. *Hadnot v. Shaw*, 826 P.2d at 987-88. But, "[t]he First Amendment's protection of internal disciplinary proceedings would be meaningless if a parishioner's accusation that was used to initiate those proceedings could be tested in a civil court." *Hiles v. Episcopal Diocese of Massachusetts*, 773 N.E.2d at 937. In other words, where a lawsuit alleging defamation would require court adjudication of the same issues decided by the church tribunal, and therefore a determination of the correctness of the church's disciplinary or membership decision, the ecclesiastical abstention doctrine requires dismissal for lack of subject matter jurisdiction.

The protection afforded by the First Amendment to church disciplinary proceedings applies to statements made after the church's decision if the statements or actions are merely implementation of, still part of, inextricably related to, or a consequence of the decision. "Within the Concept of protected implementation are not only the religious disciplinary proceeding's merits and procedure but also its end product - the expulsion sanction." *Hadnot v. Shaw*, 826 P.2d at 987-88. Thus, the church's communication of the fact and reason for excommunication are protected from judicial inquiry and review. *Id.* Announcing an expulsion or disfellowshipping to the members of a church is part of the disciplinary proceedings, particularly where instruction to church members regarding the expelled party is part of the church's belief and practice.

In *Kyritsis v. Vieron*, 382 S.W.2d 553 (Tenn. Ct. App. 1964), this court ruled on a claim brought by a former Greek Orthodox priest who had been "unfrocked," who alleged libel based on a letter by the Archbishop, to be read in all the churches in the Greek Archdiocese of North and South America, announcing the action against the priest. The letter, which was copied verbatim in the opinion, concluded "[w]e hereby direct, therefore, that you have no association with the unfrocked Theodore Kyritsis, who is considered alien to our Church, and a danger to the salvation of our souls." This court ruled that whether the church was within its rights in unfrocking the plaintiff was a question that would require the court to impermissibly judge the ecclesiastical actions and decisions of the Greek Orthodox Church and, because the defamation claim was inextricably linked to the question of the defrocking, it was also not subject to judicial review. *Id.*, 382 S.W.2d at 559.

Thus, the act of informing the members of the church of

disciplinary or expulsion actions is as much within the rights protected by ecclesiastical abstention as is the church's right to take such actions, even though it may carry some kind of negative implication about the expelled member. Statements to church members in regard to disciplinary actions against other members are privileged for the same reasons that the membership decision is protected. *See Kliebenstein v. Iowa Conference of Methodist Churches*, 663 N.W.2d 404, 407 (Iowa 2003); *Rasmussen v. Bennett*, 741 P.2d at 758. Accordingly, the Andersons' defamation to the congregation claims must be dismissed.

With regard to statements made outside the church membership, the question is still whether the specific allegedly defamatory statements arise from or are inextricably related to the protected religious decision. Statements made or repeated outside the context of the actual church disciplinary proceeding or beyond the church membership or authorities do not necessarily enjoy the full protection afforded those that are confined within the church community. *Hiles v. Episcopal Diocese of Massachusetts*, 773 N.E.2d at 513 n.12; *see also Callahan v. First Congregational Church of Haverhill*, 808 N.E.2d at 314, *quoting Hiles*.

As one court put the matter, courts could not entertain an excommunicated church member's defamation claim if the statements made in the context of a disciplinary proceeding in which she was accused of causing dissension in the church had been divulged solely to other members of the church. *Kliebenstein*, 663 N.W.2d at 406. The fact that the letter containing the allegedly defamatory statements was published outside the congregation "weaken[ed] the ecclesiastical shield." *Id*, 663 N.W.2d at 407. *See also Ausley v. Shaw*, 193 S.W.3d at 896 (holding that allegedly defamatory statements referring

to the former minister as a "witch doctor," a "voodoo preacher," and a "dog" made outside the confines of the church and in front of people from the community who were not church members were not so closely entangled with the church's decision to fire the minister as to preclude court inquiry).

Courts have taken differing approaches to public statements about the reasons for a person's expulsion from a religious organization. The question is often whether the public statement was part of, arising from, or inextricably related to the expulsion proceedings. Some courts have examined the nature of the underlying dispute and determined that if the statements at issue arose in an ecclesiastical context or were part of a Constitutionally protected religious decision such as pastoral choice or membership decisions, they were protected by the First Amendment. *See, e.g., Bryce v. Episcopal Church in he Diocese of Colorado*, 289 F.3d at 657-58 (holding that the dispute at the core of the case was an ecclesiastical one and protected by the First Amendment).

A mere statement that a person has been expelled from church membership, even though disseminated to the public, is generally not actionable, either because it is a true statement, or because a defamation action based on such a statement arises from the church's disciplinary decision. *See Glass v. First United Pentacostal Church of DeRidder*, 676 So.2d 724, 726 (Ct. App. La. 1996)(applying state law privilege and relying on the general rule that statements affirming that an individual had been expelled from membership in a church were not defamatory absent "a charge of extravagant words of irreligious or immoral conduct.") Some courts have recognized the common law conditional privilege that attaches to communications between church members and church

authorities regarding church governance and its extension to defamatory implications that are published to the public generally, absent malice, improper motive, or no reasonable belief the statements were true. *See* Am.Jur.2d § 208.

In *Hiles v. Episcopal Diocese of Massachusetts, supra*, the court examined a claim that the church official had "republished" the details of an allegedly defamatory letter that resulted in disciplinary action against a minister in a press release.[18] The court found that the record did not contain the press release, that the church's bylaws allowed waiver of confidentiality of disciplinary matters "as pastorally appropriate," and that there was no showing by the minister that the church official who issued the press release was acting outside the purview of the church's procedures, to which the plaintiff minister had agreed when ordained and by which-he was bound.

> There my be any number of reasons why [the defendant church officials] might have notified the media by providing to them what appears to have been the least amount of information about [the minister's] temporary inhibition. . . . Because this was a matter that required the exercise of discretion in the administration of the Church's disciplinary process, the Superior Court judge correctly declined jurisdiction of the negligence claims.

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[8]Although this discussion took place in the context of a "negligence" claim, it is nonetheless relevant to a defamation claim.

Hiles, 77 N.E.2d at 940.[19]

Having reviewed various analytical approaches to claims such as the ones before us, we conclude that the most appropriate approach is to focus on the central question that is always at the core of an intrachurch dispute where the ecclesiastical abstention doctrine is raised. Regardless of how stated or applied, the overriding rule remains that courts cannot intrude into purely religious decisions. Thus, as with any other claim brought in the context of an intrachurch dispute, the question is whether the defamation claims can be determined without running afoul of the First Amendment. That means, can the specific defamation claim alleged herein be adjudicated "without extensive inquiry . . . into religious law and polity" and "without resolving underlying controversies over religious doctrine," *O'Connor v. The Diocese of Honolulu*, 885 P.2d at 368, *quoting Milivojevich*, 426 U.S. 15 709-10. That includes inquiry into religious law, court examination of religious belief, or court review of the correctness of the church tribunal's decision. If, to resolve the particular claim brought, a court would need to resolve underlying controversies over religious

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[19]Additionally, the court noted that several newspaper articles appeared in the record, but that they said nothing except that the minister had been suspended from his priestly duties pending an investigation of allegations of sexual misconduct. The court made no ruling with regard to statements in these articles.

doctrine, then the claim is precluded.[20] *Milivojevich*, 26 U.S. at 709-10.

Where the allegedly defamatory statements refer to or are based upon religious doctrine or church governance, resolution of the truth or falsity of those statements, a determination critical to a defamation action, would require courts to inquire into and resolve issues of church teachings and doctrine, clearly matters of ecclesiastical cognizance. *O'Connor v. Diocese of Honolulu*, 885 P.2d at 368. In *O'Connor*, the plaintiff alleged that the church continued, after his excommunication, to publish false and defamatory material about him in a diocesan newspaper, including accusing him of ecclesiastical violations, schism, and of misrepresenting the Catholic faith in his own publications and radio show. The court determined that the question of whether the alleged statements were false could only be answered by examining church teachings and doctrine. *Id.* Since the allegations would require determination of matters obviously within the realm of

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[20]When defamation claims have survived dismissal when faced with claims of ecclesiastical abstention, the court has generally made a determination that resolution of the specific allegation would not risk prohibited entanglement. For example, *Drevlow v. Lutheran Church Missouri Synod, supra*, the court found that a minister's defamation claim based on allegations the church circulated a personal information file about him that contained false information about his wife was not precluded by the First Amendment because the church had not offered any religious reason for its actions regarding the file and, consequently, the court would not become entangled in religious controversy. *Drevlow*, 991 F.2d at 472. Similarly, in *Kliebenstein, supra*, the court allowed the defamation claim to go forward, reversing summary judgment for the church, only because it determined that the question of whether a tem used in a letter initiating expulsion proceedings against a church member, but disseminated beyond the church membership, was defamatory could be decided without intruding into religious doctrine. *Kliebenstein*, 663 N.W.2d at 407.

religious doctrine and policy, adjudication of them was beyond the jurisdiction of the courts. *Id.*

In examining a defamation claim arising from the termination of a minister's employment, one court explained:

> "Questions of truth, falsity, malice, and the various privileges that exist often take on a different hue when examined in the light f religious precepts and procedures that generally permeate controversies over who is fit to represent and speak for the church." . . . Examining such controversies is precisely the kind of inquiry that is forbidden in civil court.

Heard v. Johnson, 810 A.2d at 884, *quoting Downs*, 683 A.2d at 812. The same light illuminates church membership controversies. Similarly, a Tennessee court has stated:

> In order to determine whether or not defendant was within his rights and justified in publishing and circulating the letter announcing that [plaintiff] had been unfrocked, and, therefore, whether or not defendant is or was guilty of any libel or slander of complainant, it would be necessary to pass on the ecclesiastical actions and decisions of the Greek Orthodox Church; and this the courts of Tennessee are without power to do. In particular, the questions of whether or not the statements made by defendant are true and whether or not such statements are privileged must, in the last analysis, depend on the validity or correctness of decisions of the Greek Orthodox Church.

Kyritsis v. Vieron, 382 S.W.2d at 559.

One court likened a statement of religious belief to statements of opinion, which are not actionable as defamatory because the First Amendment's freedom of speech provision bars defamation claims based on statements that are expressions of ideas or opinions and that "cannot be reasonably interpreted as stating actual facts about an individual." *Milikovich v. Lorain Journal Co.*, 497 U.S. 1, 20 (1990). In *Sands v. Living Word Fellowship*, 34 P.3d 955 (Alaska 2001), the court held that statements that the plaintiff was a "cult recruiter" and that his church was a "cult" were not actionable in defamation because they were pronouncements of a religious belief and opinion not factually verifiable. *Id.* at 960. "Other courts in similar contexts have also refused to decide the meaning of religious terms in religious disputes. *See Hartwig v. Albertus Magnus College*, 93 F.Supp.2d 200, 128-19 (D.Conn. 2000) (declining to decide the meaning of 'priest'); *Klagsbrun v. Va'ad Harabonim*, 53 F.Supp.2d 732, 741 (D.N.J. 1999) (declining to decide the meaning of 'bigamist')." *Sands*, 34 P.3d at 960 n.24.

Religious belief, opinion and interpretation are subject to an additional constitutional protection. While statements of opinion in general, such a political opinion, are not actionable,[21]

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[21]The law of defamation generally exempts opinions, even when not based on religious belief. *Milkovich v. Lorain Journal, Inc.*, 497 U.S. at 20; *se also Greenbelt Cooperative Publishing Association v. Bresler*, 388 U.S. 6, 14 (1970) (finding that the use of the term "blackmail" to describe the plaintiff's negotiating tactics was not slander when spoken in a heated city counsel meeting, and not libel when published in newspaper articles accurately reporting the public debate because "the word was no more than rhetorical hyperbole, a vigorous epithet by those who considered [the defendant's] negotiating position extremely unreasonable"); *Old Dominion*

statements of religious opinion are doubly protected by the First Amendment. They are not amenable to proof of their truth or falsity, and secular courts have no jurisdiction to determine their truth or falsity.

The jurisdictional question in the case before us, then, must be decided by determining whether the specific allegations of defamation made herein can be adjudicated without the court becoming excessively entangled in religious doctrine, being the arbiter of religious belief, determining the correctness of scriptural interpretation, or otherwise making a clearly ecclesiastical decision.

B. The Claims Herein

To establish a claim for defamation in Tennessee, a plaintiff must establish that the defendant published a statement

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Branch No. 496 v. Austin, 418 U.S. 264, 286 (1974) (holding that a union publication describing the plaintiff non-union member as a scab, and therefore "a traitor to his God, his country, his family, and his class" was not actionable because use of words like "traitor" in that case could not be construed as representations of fact, but rather as "merely rhetorical hyperbole, lusty and imaginative expression of the contempt felt by union members toward those who refuse to join."). While there is no wholesale defamation exemption to every statement that might possibly be labeled "opinion," *Milkovich v. Lorain Journal, Inc.*, 497 U.S. at 18, a statement of opinion is actionable only if it implies the allegation of undisclosed defamatory facts as the basis for the opinion. *Revis v. McClean*, 31 S.W.3d 250, 253 (Tenn. Ct. App. 2000) (citing RESTATEMENT (SECOND) OF TORTS § 566 (1977), Conversely, "where there is no false representation of fact, one may not recover in acts for defamation merely upon the expression of an opinion which is based upon disclosed, nondefamatory facts, no matter how derogatory it may be." *Windsor v. Tennessean*, 654 S.W.2d 660, 685 (Tenn. Ct. App. 1983). Such statements of opinion are not provable as either true or false.

with knowledge that it was false and defaming to the plaintiff, with reckless disregard for the truth of the statement, or with negligence in failing to ascertain the truth of the statement. *Sullivan v. Baptist Memorial Hospital*, 995 S.W.2d 569, 571 (Tenn. 1999); *Press, Inc. V. Verran*, 569 S.W.2d 435, 442 (Tenn. 1978). Defamation may also exist where incomplete statements of true fact create a false and defamatory impression through innuendo, or where words not defamatory on their face are shown to be so in light of extrinsic evidence. *See Pate v. Service Merchandise Co., Inc.*, 959 S.W.2d 569, 574 (Tenn. Ct. App. 1996); *Memphis Publishing Co. V. Nichols*, 569 S.W.2d 412, 419 (Tenn. 1978). Similarly, the recently-recognized tort of false light invasion of privacy includes an element of falsity and requires that the defendant have knowledge of or act in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed. *West v. Media General Convergence, Inc.*, 53 s.w.3D 640 (Tenn.2001) (adopting the definition found in RESTATEMENT (SECOND) OF TORTS § 652E).[22] For purposes of resolving the subject matter jurisdiction issue, the distinctions among the torts is not relevant, but the uniform requirement of falsity is.

The Andersons assert that some of the defendant church

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[22]The court noted that there was a great deal of overlap between that tort and simple defamation, but concluded that there were situations that did not cause the sort of damage to an individual's reputation required for a defamation claim, but which nonetheless constituted an invasion of privacy by placing that individual's life or actions in an undesirable false light. 53 S.W.3d at 646. The court addressed the concern that one publication may result in multiple recoveries by adopting the RESTATEMENT'S provision that "If, in addition to false light, a plaintiff also asserts an alternative theory of recovery under libel, 'the plaintiff can proceed upon either theory or both, although he can have but one recovery for a single incident of publicity.'" 53 S.W.3d 647...

officials made statements to the general public through the mass media that defamed Barbara Anderson. Thus, by claiming that the Church's statements about their disfellowshipping were defamatory, the Andersons necessarily claim that the statements were false. However, their complaint does not quote in full any of the public statements that include language alleged to be defamatory, nor were copies of the allegedly defamatory articles or tapes of the broadcasts attached to their complaint.[23]

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[23]The articles and reports in question were made a part of the record when the Church defendants filed them as exhibits in support of their motion to dismiss. The Andersons argue that neither this court nor the trial court can consider those materials because they are outside the pleadings and the Church's motion is one to dismiss under Tenn. R. Civ. P. 12.02(6). *See Trau-Med of America v. Allstate Insurance Co.*, 71 S.W.2d at 694. In that situation, consideration of matters outside the pleadings converts the motion to one for summary judgment. However, this argument ignores the fact that the motion at issue was one to dismiss for subject matter jurisdiction made under Tenn. R. Civ. P. 12.02(1). On a Rule 12.02(1) motion to dismiss for lack of jurisdiction, the court may consider documents outside the pleadings to determine if jurisdiction exists, and consideration of such matters will not cause the Rule 12.02(1) motion to be considered a motion for summary judgment. *Land v. Dollar*, 330 U.S. 731, 735 n. 4 (1947); *Osborn v. United States*, 918 F.2d. 724, 728 n. 4 (8th Cir. 1990); *Ohio Nat'l Life Ins. Co. v. United States*, 922 F.2d 320, 324 (6th Cir. 1990); *Luellen v. Henderson*, 54 F. Supp. 2d 775, 777 (W.D. Tenn. 1999); *Carson v. Daimler-Chrysler Corp.*, W2001-03088-COA-R3-CV, 2003 WL 1618076 (Tenn. Ct. App. Mar. 19, 2003)(no Tenn. R. App. P. 11 application filed). When a defendant asserts lack of subject matter jurisdiction and submits material outside the pleadings, the motion must be considered a factual attack, and the burden of proving jurisdiction shifts to the plaintiff, and the court must weigh the evidence and determine whether jurisdiction exists. *See Osborn v. United States*, 918 F.2d. At 729; *Luellen v. Henderson*, 54 F. Supp.2d at 777. At least one court has applied these principles to arguments that damage to reputation and other tort claims were beyond the court's jurisdiction due to the ecclesiastical abstention doctrine and has dismissed the claims because the plaintiff failed to meet his burden. *Hiles v. Episcopal*

Some of the allegations, however, do include some of the specific words used. One allegation states that one of the named defendants stated to a newspaper reporter that Ms. Anderson, along with three other church members, "were to be summoned before congregation tribunals on charged of 'various spiritual violations' for the purpose of determining whether they should be 'disfellowsipped' for 'spiritual violations.'" Another allegation states that the named defendant stated to another reporter that "the local judicial proceedings against these members 'may focus on sins unrelated to public comments on sexual abuse' within the Jehovah's Witnesses' organization."

The complaint further alleges that the defendant who made these statements knew that Ms. Anderson "had not committed any spiritual violations and that no grounds for disfellowshipping existed" and that he also knew that the congregational tribunals were being conducted as part of the Church's plan to destroy the credibility of Ms. Anderson so as to frustrate her efforts to "prevent the church from sheltering child abusers."

Another allegation claims that a Church spokesman in an interview with a newspaper reporter explained that I Corinthians, chapter 5, verses 11-13, provided the scriptural basis for the Church's practice of disfellowsipping members

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Diocese of Massachusetts, 773 N.E.2d at 515-16 (holding that because the defendants moved to dismiss for lack of subject matter jurisdiction, and because they supplied supporting affidavits, the burden fell to the plaintiff to prove jurisdictional facts, and the court would address the merits of the jurisdictional claim by resolving the factual disputes between the parties). Because we can resolve the subject matter jurisdiction issue on the basis of the complaint's allegations alone, we need not explore these procedural niceties further.

such as Ms. Anderson who are unrepentant about certain sins. The complaint further alleged that a local television reporter stated on air that one of the named defendants had told her that the scriptures used to disfellowship were found in First Corinthians, 5th chapter. The reporter showed on TV the letter that Ms. Anderson received from the Church stating that she was disfellowshipped for "causing divisions." In the complaint, Ms. Anderson contended that "by applying the Apostle Paul's statements regarding shunning the wicked man because of his sins as found in I Corinthians 5," the defendants falsely labeled her as wicked.[24]

Thus, according to the complaint itself the statements alleged to be defamatory refer to religious reasons for disfellowshipping and shunning in general, and reference was made to sins and spiritual violations that could have referred specifically to Ms. Anderson. According to the complaint, in the Congregation of Jehovah's Witnesses, such violations include stirring up unrest, creating dissension, or causing doubt about the Church. These were the charges brought against Ms. Anderson and the reason given for her expulsion from the church. In order to determine whether the statements at issue were defamatory, a court would be required to determine, among other things, if they were false. We cannot see how such an inquiry could be conducted and adjudication made without encroaching on religious matters. Additionally, to determine the falsity of the statements, a court would need to examine the correctness of the decision of the Church tribunal

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[24]The two verses of scripture that Church spokesmen referred to as the basis for the practice of shunning exhort believers to remove the wicked from "among yourselves." They also urge the faithful to quit mixing in company with "anyone called a brother that is a fornicator or a greedy person or an idolater or a reviler or a drunkard or an extortioner."

that she had committed violations meriting expulsion. This we cannot do.

The last two paragraphs of the complaint's section on the defamation claims are revealing. They include statements that "Plaintiff has not had a falling away of her faith, but is most concerned about the welfare of her religion" and the problems she perceives in the Church's handling of child sexual abuse reports. Further, she states that she "is not taking issue with her church's doctrine regarding disfellowshipping with resultant shunning . . . but is asking for relief for wrongful disfellowshipping . . . due to the church's hierarchy being motivated to disfellowship Plaintiff by reasons unrelated to the dictates of their religion."

These statement make clear that, in essence, the defamation claims are simply a restatement of the Andersons' basic claim that the disfellowshipping of Ms. Anderson was wrongful and not because of her violation of any Church tenets, but, instead, for other reasons related to her activities. We have already determined that the wrongful disfellowshipping and related claims based on the same argument are precluded from court adjudication. The same reasons and legal principles dictate that the defamation claims are likewise outside the courts' authority to adjudicate.

X. CONCLUSION

Based on the reasons set out, we reverse the trial court's actions in denying the defendants' motion to dismiss for lack of subject matter jurisdiction based upon the First Amendment's protection of decision o church tribunals on religious questions. We hold that all of the plaintiffs' claims, as alleged in the complaint, are barred by the ecclesiastical

abstention doctrine. Accordingly, the amended complaint if dismissed. Costs on appeal are taxed to the appellees, Mr. and Mrs. Anderson.

/s/ Patricia J. Cottrell
PATRICIA J. COTTRELL, JUDGE

C. The Circuit Court's Opinion

IN THE CIRCUIT COURT FOR THE
FOURTEENTH JUDICIAL DISTRICT OF
TENNESSEE, AT MANCHESTER, PART II

BARBARA J. ANDERSON and A. JOSEPH ANDERSON,	)	
Plaintiffs,	)	
vs.	)	No.: 32,282
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, WATCHTOWER ENTERPRISES, L.L.C., WATCHTOWER FOUNDATION, INC., WATCHTOWER ASSOCIATES, LTD., KINGDOM SUPPORT SERVICES, INC., CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES, THE WATCHTOWER GROUP, INC., MANCHESTER CONGREGATION OF JEHOVAH'S WITNESSES ELDERS, LAWRENCE A. SEELY, GARY HOBSON, DALE DORMANEN, ROBERT E. MATTHEWS, DAVID SEMONIAN, J. R. BROWN, JOHN DOE #1, JOHN DOE #2, JOHN	)	

DOE #3, and JOHN DOE #4,)
)
Defendants.)

ORDER

This cause came on to be heard by the undersigned on October 6, 2003 on the defendants' motion to dismiss the amended complaint of the plaintiffs. Defendants allege two grounds: one, that the court lacked subject matter jurisdiction and two, the amended complaint should be dismissed for failure to state a claim. On the first matter, defendants cite Tennessee Rules of Civil Procedure 12.02(1) and sets out in great detail Tennessee and U. S. Supreme Court decisions that specifically prohibit civil courts from exercising jurisdiction over internal matters of a church because of the constitutional doctrine of "ecclesiastical abstention". Plaintiffs counter that specifically in counts one through seven of the amended complaint there are clear assertions of well established causes of action that they expressly plead specifically, intentional, malicious, and fraudulent tortious conduct. The parties have plead exhaustively a variety of issues much of which this court should not consider in a motion to dismiss. (They are more appropriate in a motion for summary judgment.) Just as in a motion for summary judgment, it is the obligation of the trial court to construe the complaint liberally in favor of the plaintiff taking all allegations of fact as true and denying the motion unless it appears that the plaintiff can prove no set of facts in support of plaintiffs' claim. It is the opinion of the undersigned that the court has jurisdiction of one through seven of the complaint which alleges malicious, fraudulent, and bad faith conduct. Count eight is somewhat more suspect in light of the fact that there is no current Tennessee case law that addresses "wrongful disfellowship" as a cause of action, however the

plaintiff will be allowed to go forward at the present time on all eight counts. Wherefore, the defendants' motion to dismiss is respectfully denied.

Even in the absence of the doctrine of "ecclesiastical abstention" which this writer wholeheartedly embraces, the litigants can rest assured that the troubled soul of this trial judge has no desire to sit in judgment on matters of internal discipline, faith, church customs, and church government of his fellow human beings. Nor to permit a judge to do likewise.

ENTER this the 3rd day of November, 2003.

/s/ John W. Rollins
John W. Rollins, Circuit Judge, Part II

D. IN THE CIRCUIT COURT OF THE STATE OF TENNESSEE FOR THE COUNTY OF COFFEE

BARBARA J. ANDERSON,	)	
and	)	
A. JOSEPH ANDERSON,	)	
	)	
Plaintiffs,	)	
v.	)	
WATCHTOWER BIBLE AND TRACT	)	
SOCIETY OF NEW YORK, INC.,	)	
WATCH TOWER BIBLE AND TRACT	)	
SOCIETY OF PENNSYLVANIA,	)	
WATCHTOWER ENTERPRISES, L.L.C.,	)	
WATCHTOWER FOUNDATION, INC.,	)	CASE NO.
WATCHTOWER ASSOCIATES, LTD.,	)	32,382
KINGDOM SUPPORT SERVICES, INC.,	)	**Jury Trial**
CHRISTIAN CONGREGATION OF	)	**Requested**
JEHOVAH'S WITNESSES,	)	
RELIGIOUS ORDER OF JEHOVAH'S	)	
WITNESSES,	)	
THE WATCHTOWER GROUP, INC.,	)	
MANCHESTER CONGREGATION	)	
OF JEHOVAH'S WITNESSES ELDERS:	)	
and LAWRENCE A. SEELY, GARY	)	
HOBSON, DALE DORMANEN,	)	
ROBERT E. MATTHEWS, DAVID	)	
SEMONIAN, J.R. BROWN, JOHN DOE #1)		
JOHN DOE #2, JOHN DOE #3,	)	
JOHN DOE #4,	)	
	)	
Defendants.	)	

Plaintiff alleges:

AMENDED COMPLAINT

GENERAL ALLEGATIONS:

PARTIES

1. Plaintiffs **BARBARA J. ANDERSON and A. JOSEPH ANDERSON** are resident citizens of 1527 Normandy Rd., Normandy, Coffee County, Tennessee.

2. Defendant, **WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.**, is a corporation organized and existing under the laws of the State of New York. At all times relevant to this Amended Complaint, Watchtower Bible and Tract Society of New York, Inc., maintained its offices at 25 Columbia Heights, Brooklyn, New York 11201-2483. On information and belief, this Defendant and the Defendant Watch Tower Bible and Tract Society of Pennsylvania, Inc., generally oversee and control the other corporate Defendants.

3. Defendant, **WATCH TOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, INC.**, is a corporation organized and existing under the laws of the State of Pennsylvania. At all times relevant to this Amended Complaint, Watchtower Bible and Tract Society of Pennsylvania, Inc. maintained its offices at Wabash Building, Pittsburgh, Pennsylvania. On information and belief, this Defendant and the Defendant Watchtower Bible and Tract Society of New York, Inc. generally oversee and control the other corporate Defendants.

4. Defendant, **WATCHTOWER ENTERPRISES, L.L.C.**, is a limited liability company organized and existing under the laws of the State of New York. At all times relevant to this Amended Complaint, Watchtower Enterprises, L.L.C., maintained its offices at 934 East 84th Street, Brooklyn, New York 11236.

5. Defendant, **WATCHTOWER FOUNDATION, INC.**, is a corporation organized and existing under the laws of the State of New York. At all times relevant to this Amended Complaint, Watchtower Foundation, Inc., maintained its offices at 934 East 84th Street, Brooklyn, New York 11236.

6. Defendant, **WATCHTOWER ASSOCIATES, LTD.**, is a corporation organized and existing under the laws of the State of New York. At all times relevant to this Amended Complaint, Watchtower Associates, Ltd., maintained its offices at 147 Holiday Drive, Westbury, New York 11797.

7. Defendant, **KINGDOM SUPPORT SERVICES, INC.**, is a corporation organized and existing under the laws of the State of New York. At all times relevant to this Amended Complaint, Kingdom Support Services, Inc., maintained its offices at 98 Montague Street, New York 11201.

8. Defendant, **CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES,** is a corporation organized and existing under the laws of the State of New York. At all times relevant to this Amended Complaint, Christian Congregation of Jehovah's Witnesses maintained its offices at 100 Watchtower Drive, Patterson, New York 12563-9204.

9. Defendant, **RELIGIOUS ORDER OF JEHOVAH'S WITNESSES,** is a corporation organized and

existing under the laws of the State of New York. At all times relevant to this Amended Complaint, Religious Order of Jehovah's Witnesses maintained its offices at 25 Columbia Heights, Brooklyn, New York 11201-2483.

10. Defendant, **THE WATCHTOWER GROUP, INC.**, is a corporation organized and existing under the laws of the State of Pennsylvania. At all times relevant to this Amended Complaint, The Watchtower Group, Inc., maintained its office at 196 E. Butler Avenue, Chalfont, Pennsylvania 18914.

Service of process can be had on The Watchtower Group, Inc., by serving the Pennsylvania Secretary of State, Office of the Department of State, 206 North Office Building, Harrisburg, Pennsylvania 17120.

11. Defendant, **MANCHESTER CONGREGATION OF JEHOVAH'S WITNESSES,** consists of elders, members, and/or participants of the religious doctrine and dictates as promulgated, published and governed by the Defendants jointly in pursuit of their religious order commonly referred to as "Jehovah's Witnesses." At all times relevant to this Amended Complaint, Manchester Congregation of Jehovah's Witnesses maintained its offices at Kingdom Hall Building, 49 Bowling Alley Road, Manchester, Tennessee 37355.

Service of process can be had on Manchester Congregation of Jehovah's Witnesses, the elders, members and/or participants hereinafter named by serving them individually or serving their congregational Presiding Officer, Lawrence A. Seely, 309 Crestwood Drive, Tullahoma, Tennessee 37388.

12. Manchester Congregation of Jehovah's Witnesses' Defendants are:

LAWRENCE L. SEELY is an individual residing in Tennessee and may be served with process at 309 Crestwood Drive, Tullahoma, Tennessee 37388.

DALE DORMANEN is an individual residing in Tennessee and may be served with process at 4657 Mt. View Road, Manchester, Tennessee 37355.

GARY HOBSON is an individual residing in Tennessee and may be served with process at 4159 Hickerson Road, Manchester, Tennessee 37355.

Other Defendants:

DAVID SEMONIAN and J. R. BROWN are individuals who may be served at 25 Columbia Heights, Brooklyn New York 11201.

ROBERT E. MATTHEWS is an individual residing in Tennessee and may be served with process at 922 E. College Street, Pulaski, Tennessee 38478.

JOHN DOE, #1, when his identity is discovered, is an unknown individual residing in Tennessee, and when his identity is known, may be served with process.

JOHN DOE, #2, when his identity is discovered, is an unknown individual residing in Tennessee, and when his identity is known, may be served with process.

JOHN DOE, #3, when his identity is discovered, is an unknown individual residing in Tennessee, and when his identity is known, may be served with process.

JOHN DOE, #4, when his identity is discovered, is an unknown individual residing in Tennessee, and when his identity is known, may be served with process.

The individual named Defendants are members of the organization of Jehovah's Witnesses who participated in the Defendants' plan to intentionally, fraudulently, and maliciously

use its otherwise legitimate right to disfellowship members to silence Plaintiff Barbara J. Anderson in her efforts to assist victims of child sexual abuse and to prevent the church from sheltering child abusers. All Defendants entered into a conspiracy to accomplish this goal and either directly or through their agents took steps to accomplish it.

JURISDICTION AND VENUE

13. The venue is proper in Coffee County, Tennessee, due to Plaintiff being a resident citizen of Coffee County, Tennessee and acts of the various complaints on Plaintiff's point of impact in Coffee County, Tennessee. Individual members of the Manchester Congregation of Jehovah's Witnesses, and their elders involved, have their principal place of residence in Coffee County. Some of the acts and omissions that give rise to Plaintiff's claims occurred in Coffee County.

14. (a) Each of the out of state Defendants regularly engages in activities in the State of Tennessee designed to promote and foster the Jehovah's Witnesses religion. Said out of state Defendants acting through their agents were and continue to be active throughout virtually every county in the State of Tennessee with an interest to publish its doctrine therein and to govern said members, participants, publishers, pioneers, elders, officers, employees, agents or other persons acting on its behalf. Each out of state Defendant committed the tortious acts alleged herein for the purpose of harming and affecting the Plaintiffs in the State of Tennessee. Many of the tortious acts alleged occurred in the State of Tennessee.

(b) In the alternative, the Plaintiffs allege that each of the out of state Defendants engaged in a conspiracy to wrongfully disfellowship the Plaintiffs as hereinafter alleged. The acts of individual Defendants in the State of Tennessee

pursuant to this conspiracy were the acts of all of the Defendants. Pursuant to this conspiracy, the out of state Defendants reasonably expected the conspiracy to lead to consequences in Tennessee, their co-conspirators committed overt acts in furtherance of the conspiracy in this state, and these acts are of a type which, if committed by a non-resident, would subject the non-resident to personal jurisdiction under the long-arm statute of the forum.

15. Jurisdiction over the out of state Defendants is proper under the provisions of the Tennessee long arm statute and because each Defendant has sufficient contacts with the forum to satisfy due process or under the conspiracy theory of jurisdiction.

FACTS

16. At past times relevant, Plaintiff Barbara J. Anderson was a member and/or participant in the organization known as Jehovah's Witnesses. In 1982, Plaintiff was invited to live and work as a volunteer member at the world headquarters of Jehovah's Witnesses in Brooklyn, New York. Plaintiff moved to Tullahoma, Tennessee at the end of 1992 and attended the Manchester Congregation in Manchester, Tennessee. She continued her membership and participation in the Jehovah's Witnesses up and until her wrongful disfellowshipping as hereinafter alleged.

17. At all past times relevant, Plaintiff A. Joseph Anderson was a member and/or participant in the Jehovah's Witnesses organization and was the husband of Plaintiff Barbara J. Anderson. At all past times relevant and continuing until his wrongful disfellowshipping in July of 2002, Plaintiff

A. Joseph Anderson was an elder in the Manchester Congregation in Manchester, Tennessee.

18. The head of the organization of Jehovah's Witnesses is the Governing Body, which consists of approximately 10-13 men, also known as members of the Heavenly Class who all are anointed members of the organization's Faithful and Discreet Slave Class. The Governing Body served until October 2000 as members of the board of directors and officers of the Defendants Watch Tower Bible and Tract Society of Pennsylvania, Inc. and the Watchtower Bible and Tract Society of New York, Inc. as well as other legal entities. The Governing Body, as directors before 2000, used these above two named legal corporations to direct all of the organization of Jehovah's Witnesses and its affairs around the world. Since 2000, the Governing Body has been using said Defendant Corporations along with other corporations to direct the affairs of Jehovah's Witnesses' organization, although they no longer serve as members on any board of directors having resigned as such as announced at the Annual Corporation Meeting of the Watchtower Bible and Tract Society of Pennsylvania, Inc. and Watchtower Bible and Tract Society of New York, Inc. held in Jersey City, New Jersey, October 7, 2000. Some of these other Defendant Corporations are: Watchtower Enterprises, L.L.C, Watchtower Foundation, Inc., Watchtower Associates, Ltd., The Watchtower Group Inc. As announced at the Annual Corporation Meeting held on October 7, 2000 in Jersey City, New Jersey, the establishment of three new legal corporations were announced, these being: Defendants Kingdom Support Services, Inc., Christian Congregation of Jehovah's Witnesses, and Religious Order of Jehovah's Witnesses.

The ultimate power of the organization of Jehovah's Witnesses rests with the Governing Body which has authority over every person and all matters in the organization and its world wide operations including, but not limited to, the appointment of congregation officials, the promulgation of organizational policies and procedures, the management of property and assets, the conduct of organization-controlled entities, the discipline of individual Jehovah's Witnesses and furthering the overall welfare of the organization and its followers, especially its children. The authority of the Governing Body in the organization of Jehovah's Witnesses is absolute. The Governing Body is organized into six committees: The Chairman's Committee, the Writing Committee, the Teaching Committee, the Publishing Committee, the Personnel Committee, and the Service Committee.

19. The central headquarters for the organization of Jehovah's Witnesses is located at 25 Columbia Heights, Brooklyn, New York 11201. The organization of Jehovah's Witnesses maintains a central repository of records of organization members (herein "publishers") at its facilities in Patterson, New York, 2821 Route 22, Patterson, NY 12563-2237, under the control of the Service Department, including the formal disciplinary history of all members, participants, publishers, pioneers, elders, officers, employees, agents and other persons. A member, participant, publisher, pioneer, elder, officer, employee, agent and other person who has been disciplined by being removed from the organization of Jehovah's Witnesses has been "disfellowshipped" and cannot be reinstated without the consent of the Governing Body or its appointed entities. The Governing Body has ultimate power to bar a member, participant, publisher, pioneer, elder, officer,

employee, agent and other person from serving in the organization of Jehovah's Witnesses in any capacity.

20. The Charter of the Watchtower Bible and Tract Society of New York, Inc. states in part that its corporate purposes are, charitable, benevolent and religious purposes, the moral and mental improvement of men and women, the dissemination of Bible truths in various languages by means of the publication of tracts, pamphlets, papers and other religious documents, and for religious missionary work, and for the purposes of maintaining and conducting classes for the instruction of men and women on the premises or by mail.

21. The Governing Body administers the organization of Jehovah's Witnesses through a multi-level structure. The local level consists of the congregations of Jehovah's Witnesses, which consist of elders, ministerial servants, pioneers and other congregational publishers.

22. A congregation's elders are appointed by the Governing Body as the spiritual leaders of the congregation and are held out by the organization of Jehovah's Witnesses as qualified spiritual shepherds. All of the elders of a congregation whether they hold a specific servant position or not, make up the "Body of Elders." The Body of Elders presides over certain congregational matters and all publishers within the congregation, including judicial matters, and all publishers must respect and obey at all times decisions made by the Body of Elders. Judicial matters within a congregation include any infraction of what the Governing Body has deemed to be a breach of God's law.

23. The general member of the organization is sometimes referred to as a "publisher." A person becomes a

publisher after a training period of Bible Study and participates in an evangelizing work. Publishers can be unbaptized or baptized.

24. The next level of the organization of Jehovah's Witnesses is the Circuit Overseer. The Circuit Overseer supervises approximately 16-20 congregations which makes up a circuit. All communication received at a congregation from a Circuit Overseer is considered to be instructions direct from the Governing Body.

25. The level above the circuit is the district, which has a District Overseer. Each district has approximately 10 circuits which circuits the District Overseer supervises.

26. Above the district level are the worldwide "zones" which are made up of branch representatives and a branch office. In the branch offices, there are Branch Committees to oversee the work in the countries of their jurisdiction.

27. The United States of America has one branch. The branch headquarters called a Bethel has three Bethel complexes. The Bethel complexes are located at 25 Columbia Heights, Brooklyn, NY 11201, 2821 Route 22, Patterson, NY 12563-2237 and at Walkill, New York 12589. The major departments at the Brooklyn complex are the Writing Department, Treasury Offices and Executive Offices, including some of the Governing Body offices such as the corporate heads. These and other departments at the United States branch influence and are responsible under the Governing Body's direction for overseeing at all the branches internationally the evangelizing work and all congregational activities.

28. The major departments in the Patterson, New York complex are the Legal Department under the direction of the Watchtower Bible and Tract Society of New York, Inc., and the Service Department under the direction of a corporation formed in the year 2000 named the Christian Congregation of Jehovah's Witnesses. The Service Department is responsible for overseeing the preaching work, assembly programs, and has direct oversight of the congregations of Jehovah's Witnesses, including the elders, circuit and district overseers in the organization of Jehovah's Witnesses. The Service Department regularly issues letters to congregation elders, circuit and district overseers and congregations concerning administration, discipline, oversight and all matters pertaining to the organization of Jehovah's Witnesses. All of the entities discussed above ultimately answer to the Governing Body and the corporations known as the Watchtower Bible and Tract Society of New York, Inc., and the Watch Tower Bible and Tract Society of Pennsylvania, Inc. Each Governing Body member oversees a particular department.

29. The Governing Body of Jehovah's Witnesses has comprehensive, pastoral and administrative responsibility including primary responsibility for developmental programs involving congregational publishers and youth, overseeing the work of adults called to assist in teaching and spreading the word, determining the worthiness of all publishers who attend the Kingdom Halls of Jehovah's Witnesses and based on that determination choosing men who are called to serve as ministerial servants, elders, circuit and district overseers, and other positions of responsibility within the organization of Jehovah's Witnesses. The Governing Body, through its departments and other entities, is authorized to initiate serious disciplinary proceedings such as disfellowshipping, disassociation, deletion, acceptance of resignation,

reinstatement, restrictions, restorations of privileges, public and private reproof, marking and removal against all publishers, pioneers, elders and other members and agents of the organization. This also includes the marking and removal of unbaptized publishers.

30. Publishers are encouraged to believe that the overseers, from elder to the Governing Body, are "appointed by Holy Spirit" to their office, that decisions of each overseer within the scope of their authority are guided by the Holy Spirit and the overseers are specially endowed with wisdom and understanding from their reading of the Bible. Publishers are expected to seek and comply with the advice of congregation elders, ministerial servants, circuit and district overseers, Bethel elders, and ultimately the Governing Body on matters involving important decisions in their daily lives.

31. All publishers are expected to proselytize the religion of Jehovah's Witnesses and to offer and provide religious instruction to prospective converts, including children.

32. (a) Directed by the Governing Body, the elders of Jehovah's Witnesses congregations have specific authority regarding dissemination of communication; and are authorized representatives of the organization of Jehovah's Witnesses to receive reports of possible wrongdoing and offer congregational discipline to the organization's publishers. The organizational setup is such that the elders are considered to be the voice of the Defendant Watchtower Bible & Tract Society of New York, Inc., and, additionally, the Defendant Corporation named, The Christian Congregation of Jehovah's Witnesses. The Defendant Watchtower Bible & Tract Society of New York, Inc. and the Defendant Corporation named, The

Christian Congregation of Jehovah's Witnesses, are considered by the elders as the voice of Christ. The general membership and participants from the publisher level through the top of the hierarchy are taught that if you take a matter to the elders you get the best forum already that you could ever be in. Therefore, matters acted upon by the elders are with the advice, consent and direction of corporate officials acting by and through what is commonly referred to by the membership as "The Watchtower."

(b) The above named local Defendant Elders were at all times mentioned here, agents of the Watchtower Corporate Defendants and were during the disfellowshipping hearings hereinafter set out acting in the course and scope of this agency at all relevant times. Thus the Watchtower Corporate Defendants are vicariously liable for the wrongful and unlawful conduct of their elders.

33. Under Jehovah's Witnesses doctrine, all outsiders - even police and social workers - are co-conspirators with Satan and are part of the condemned world soon to be destroyed by God. Church doctrine provides that, when dealing with most wrongdoings considered a sin (other than murder) which involves any member, the church member is required to go to the elders first and to allow these elders make the decision for where you go from there.

34. To bypass the chain of command and to report directly to the authorities is considered a violation of church doctrine and subjects the church member to the risk of being expelled from the church or "disfellowshipped." Being disfellowshipped has severe consequences. A member who has been disfellowshipped is typically perceived by other Jehovah's Witnesses' members as having committed serious spiritual violations and, even worse, that the disfellowshipped member

is an unrepentant practicer of sin who needs to be expelled so as not to contaminate other members, their families, and the congregation by their sinful conduct.

35. One extreme consequence of disfellowshipping is "shunning," a form of ostracism. Members of the Jehovah's Witness community are prohibited — under threat of their own disfellowship — from having any contact with disfellowshipped persons and may not even greet them. Family members who do not live in the same house may conduct necessary family business with disfellowshipped relatives but may not communicate with them on any other subject.

36. Jehovah's Witnesses leaders have long publicly insisted that the sexual abuse of children is not tolerated or concealed in their congregations. In fact, the Jehovah's Witnesses have long been plagued by incidents of child sexual abuse committed not only by rank and file members but even by local elders. Victims of child sexual abuse by church members face disturbing choices. Normally, a parent of a minor victim or the victim himself or herself would report the sexual abuse to the police or other state authorities. But Jehovah's Witnesses' policy traditionally forbids such reporting to outsiders. Instead, victims of child sexual abuse are directed to report to their elders. These elders on information and belief are usually volunteers and are essentially untrained clergy with minimal education. They have absolutely no training in dealing with the complex issues of child sexual abuse. They are trained to do little more than to enforce organizational guidelines, to deliver biblical platitudes, and to offer prayers.

37. When encountering a case of child sexual abuse for the first time, Jehovah's Witnesses policy requires to first call the Legal Department at the group's headquarters. Although the

Legal Department purportedly advises the elders to report to the authorities in those states that have mandatory reporting laws applicable to clergy, on information and belief this practice is rarely followed. In states lacking mandatory reporting laws, the Legal Department on information and belief directs the elders to handle the matter internally according to church policy.

38. Church policy dictates that, absent a confession, a person accused of child sexual abuse must be exonerated unless there are two members (including the victim if the victim is a Jehovah's Witnesses member) of the faith who can serve as eyewitnesses to the crime. If exonerated, the victim is directed to treat the accused as innocent in God's eyes and not to repeat the charge to anyone else – even other potential victims, like younger siblings – at the risk of being disfellowshipped.

39. Child abuse victims who follow church policy have no meaningful remedy. For example, a recent episode of NBC's *Dateline* reported the following incident. A telephone conversation between an elder reporting sexual abuse in early 2001 and the New York headquarters was tape recorded. The recording disclosed an official from the group advising the elder to "walk away from it," and to "leave it for Jehovah," even though the elder was calling from a state that mandates reporting by clerics.

40. At all times relevant herein Plaintiffs were and were considered by the Defendants to be members and/or participants or publishers of the organization of Jehovah's Witnesses by and through the Kingdom Hall of Jehovah's Witnesses, Manchester, Tennessee. On information and belief, there are 6 million people who are counted as members of Jehovah's Witnesses' worldwide. Nine million more periodically attend Jehovah's Witnesses' church programs

worldwide. The United States has approximately one million participating (active) members. There are thousands of participating (active) members in Tennessee.

41. Plaintiff Barbara J. Anderson was an active volunteer worker at the "Watchtower" international headquarters in Brooklyn, New York from 1982 until the end of 1992. During the last three years of her tenure at the world headquarters Plaintiff Barbara J. Anderson was a researcher for the organization. As a part of her duties at the international headquarters, she performed numerous research activities and gathered much data for and on behalf of the Watchtower Bible & Tract Society of New York, Inc.'s Writing Department which publishes the widely-known journals, distributed on a semi-monthly basis, *The Watchtower* and *Awake!*, plus numerous other Bible commentary publications. After 1992, the Plaintiff was also an active volunteer researcher for the organization from her home through 1996.

42. As a result of her numerous research efforts between 1991 and 1996 for certain senior members of the Writing Department at the world headquarters in Brooklyn, New York, Plaintiff Barbara J. Anderson became aware of and gathered much information regarding child molestation and abuse instances involving members of the Jehovah's Witnesses' organization on a nation-wide basis. She also became aware of certain policies and procedures which operated to the detriment of the victim and also to the detriment of the general congregation where the alleged molester or abuser was an active member and/or participant or publisher. Plaintiff Barbara J. Anderson also became aware of the severe traumatic effect these policies were having and the long-lasting harm that they were doing to the victims of molestation and abuse.

43. As a result of being aware of these improper policies which also prevented many instances of child molestation and abuse from being reported to proper legal authorities for appropriate investigation and prosecution as the case may be, Plaintiff Barbara J. Anderson experienced a crisis of conscience and felt something needed to be done to change church policy and to help victims of abuse and molestation. By the year 2000, Plaintiff was quietly assisting Jehovah's Witnesses' abuse victims or interested parties with information and advice.

44. In August of 2000, Ms. Anderson began quietly assisting a Kentucky Jehovah's Witnesses elder in a joint effort to change the child abuse policies of the Watchtower. By the end of the year, this elder decided to resign his position and go public with the allegations of the church's improper conduct and policies. In early 2001 this elder accordingly disclosed these policies in the media.

45. The NBC television program *Dateline* learned of the church's child abuse problem and began investigating child abuse in the Jehovah's Witnesses church. In February, 2001 a *Dateline* producer learned of Ms. Anderson's efforts to change church policy and invited Ms. Anderson and the elder to come to NBC in New York City at the end of February for an interview with another producer. Ms. Anderson accepted this invitation and had a number of conversations with *Dateline* personnel concerning the problem.

46. In late April of 2001, Ms. Anderson learned about a Fayetteville, Tennessee Jehovah's Witness who had been convicted in January 2001 of incidents of criminal child abuse which had occurred about eight years previously. She learned the identity of the victim and contacted her mother. The mother

told her of the details of how church officials had covered up the incidents for years.

47. *Dateline* decided to film an interview of Ms. Anderson. This interview was taped on May 3, 2001. Ms. Anderson on or about May 11, 2001 began corresponding with the victim's mother and asked her to appear on the *Dateline* program.

48. On information and belief, Jehovah's Witnesses officials in New York in May of 2001 learned of Ms. Anderson's involvement with the *Dateline* program. They also apparently learned of the e-mail Ms. Anderson had sent to the victim's mother. Will Gorham, the Circuit Overseer of the Jehovah's Witnesses, also learned about Ms. Anderson's plan to appear on *Dateline*. He called Mr. Anderson, urged him to prevent his wife from appearing on the *Dateline* program, and told him he could be removed as an elder if he did not do so. Mr. Anderson declined to interfere with his wife's plan to appear on the program.

49. In July 2001, Jehovah's Witnesses officials directed the local elders of the Manchester Congregation to investigate Ms. Anderson to determine if she was proselytizing her views about Jehovah's Witnesses child abuse in Jehovah's Witnesses congregations locally. This investigation disclosed no evidence that Ms. Anderson was talking about her views to other members of the Jehovah's Witnesses. The local elders so informed the New York headquarters.

50. For the next several months, *Dateline* officials gathered additional information about child sexual abuse by church members and the response of the Jehovah's Witnesses

to this problem. The *Dateline* program was scheduled to be broadcast on May 28, 2002.

51. With the *Dateline* broadcast approaching, the Defendants on information and belief conspired and formulated a plan designed to destroy the credibility of the participants in the broadcast. In furtherance of this plan, Jehovah's Witnesses officials in New York in late April or early May of 2002 sent a letter to the local elders of the Manchester Congregation and directed them immediately "to convene a judicial committee hearing and to summon the Plaintiff to the hearing." They directed the elders to take this step without following the normal – and more time consuming procedures – that church policy required for such hearings. On information and belief, the reason for this haste was to have Ms. Anderson disfellowshipped prior to the broadcast. They also directed the committee to charge Ms. Anderson with "apostasy" and specifically with contributing an article to an apostate journal and causing divisions in the church.

52. Apostasy normally denotes a turning away from one's faith and in the Jehovah's Witnesses also includes the stirring up of unrest and the causing of division within the members of the church. A finding that Ms. Anderson had committed apostasy would result in her being "disfellowshipped."

53. Jehovah's Witnesses officials in New York sent similar letters to the local elders of the congregations in which the other participants on the *Dateline* program belonged. On information and belief, this hasty attempt to charge, try, and disfellowship Ms. Anderson and the other *Dateline* participants prior to the *Dateline* program was part of a scheme devised by the Defendants to keep members of the Jehovah's Witnesses

who watched the program from believing any statements she made on the program that were disfavorable to the Jehovah's Witnesses.

54. Plaintiff A. Joseph Anderson learned of the letter on May 2, 2002 at the meeting of the local elders. Lawrence Seely, the Presiding Overseer of the Manchester Congregation, directed Mr. Anderson to notify Ms. Anderson to appear on May 10, 2002 before a judicial committee that would try her on the apostasy charge.

55. On information and belief, between May 6 and 11, 2002 Defendant J.R. Brown, a national spokesman for the Jehovah's Witnesses, made comments to the media (which the media published) that several Jehovah's Witnesses members were to be summoned and tried on charges of having committed various spiritual violations for the purpose of determining whether they should be disfellowshipped for committing spiritual violations. He also advised a reporter from the Washington Post that the proceedings would focus on sins unrelated to public comments made on *Dateline* concerning sexual abuse. Brown's comments were reported in various media.

56. A number of Jehovah's Witnesses in Tennessee and New York who were aware of Ms. Anderson's planned appearance on *Dateline* read or heard of these comments understood that Brown was referring to her as one of the persons charged with spiritual violations in general and with spiritual violations unrelated to the comments she planned to make on *Dateline*.

57. On May 10, 2002 the judicial committee hearing was held on the charges of submitting an article to an apostate

journal and on causing division in the church. Ms. Anderson attended the hearing and proved to the satisfaction of committee members that she had not submitted an article to apostate journal and that she had not caused division in the church.

58. Rebuffed in their scheme to disfellowship Ms. Anderson, the Defendants in furtherance of their fraudulent scheme concocted new charges against her. On May 17, 2002 Presiding Overseer, Larry Seely contacted Ms. Anderson and told that her that she had been charged with (1) disrupting the unity of the congregation and (2) undermining confidence in Jehovah's arrangements. He asked her to attend another judicial hearing to be convened two days later. On information and belief, the corporate Defendants directed Mr. Seely to take these steps.

59. Recognizing that the charges were a sham intended to silence her, Ms. Anderson declined to attend the hearing. On information and belief, the local elders held the May 19, 2002 hearing and purported to find her guilty of causing divisions in the church. They ordered that she be disfellowshipped from the church.

60. On May 20, 2002 David Semonian, another national spokesman for the Jehovah's Witnesses, made comments to the media that 1 Corinthians chapter 5 in the Bible is the scriptural basis for the practice of disfellowshipping members who are unrepentant about such serious sins as fornication, extortion, and drunkardness.

61. A number of Jehovah's Witnesses in Tennessee and New York who were aware of Ms. Anderson's planned appearance on *Dateline* read or heard of these comments and

understood that Mr. Semonian was referring to Ms. Anderson as one of the persons charged with fornication, extortion, and drunkardness and who was unrepentant about committing these sins.

62. Plaintiff A. Joseph Anderson resigned his position as elder on May 23, 2002. By letter dated May 23, 2002, the elders advised Ms. Anderson that "the decision rendered by the judicial committee was to disfellowship from the congregation of Jehovah's Witnesses on the charge of causing division."

63. On May 28, 2002 *Dateline* aired its segment on the Jehovah's Witnesses. The segment featured an interview with Ms. Anderson. During the interview, the narrator stated that Ms. Anderson in her research at the New York headquarters had discovered "hundreds of molestation cases on record, all kept secret in church files--secret not only from the outside world, but from the members themselves, the families, the mothers and fathers and children who trust the church is looking out for them." Ms. Anderson explained that church elders followed biblical scriptures when they investigated child abuse allegations and explained the church's policy of requiring multiple witnesses to substantiate child abuse allegations. She also stated that the "Watchtower Society didn't want to acknowledge that these girls were telling the truth because they were accusing elders of molesting them."

64. On May 28, 2002, Ms. Anderson received the May 23 letter stating that she had been disfellowshipped for "causing divisions." On May 28, 2002 Defendant Lawrence Seely, after being contacted by a television reporter seeking on-the-record comments about Ms. Anderson's *Dateline* appearance and the practice of disfellowshipping, made comments to the television reporter that 1 Corinthians chapter

5 in the Bible provided the basis for this practice. On information and belief, the reporter responded that this chapter discusses gross sins including fornication. Mr. Seely made no effort to advise the reporter that Ms. Anderson had not been charged with any such gross sin. The reporter subsequently made statements to a television audience that Ms. Anderson had been disfellowshipped for causing divisions and added on camera that 1 Corinthians chapter 5 were the scriptures used to find Ms. Anderson guilty.

65. A number of Jehovah's Witnesses in Tennessee and New York who were aware of Ms. Anderson's planned appearance on *Dateline* read or heard of these comments and understood that Mr. Seely was referring to Ms. Anderson as one of the persons charged with gross sins including fornication and that she was unrepentant about committing these sins.

66. Mr. Anderson wrote a resignation letter outlining his grievances, one of which included the disfellowshipping of his wife and sent it to Watchtower Headquarters (Service Dept.) on June 5, 2002. On June 8, 2002 the *Dateline* program was broadcast a second time.

67. On July 21, 2002 the Jehovah's Witnesses denied Ms. Anderson's appeal of the decision to disfellowship her. The following Thursday, July 25, 2002, a brief announcement was made at the Thursday evening church services that "Barbara Anderson has been disfellowshipped." Mr. Anderson was subsequently disfellowshipped when the local elders read a disfellowshipping letter to the Manchester Congregation in August 2002.

68. Following the decision, all members of the Jehovah's Witnesses shunned Ms. Anderson and Mr. Anderson.

This included their only child and grandchild. This caused both Plaintiffs to suffer great emotional distress. Ms. Anderson's mother refused to shun her daughter but Ms. Anderson's son in retaliation shunned his grandmother. This caused further emotional distress to Ms. Anderson and to Mr. Anderson.

69. Plaintiff A. Joseph Anderson worked as a plumber. Most of his customers were Jehovah's Witnesses and he depended heavily on repeat business from these customers. The Defendants on information and belief know of his business and the identity of his customers. Following his disfellowshipping, the Defendants on information and belief directed his Jehovah's Witnesses customers to disassociate themselves from the Andersons. The income from his plumbing business was accordingly substantially reduced.

COUNT ONE
(Defamation through statements published to the media)

70. The Plaintiffs reassert and reallege paragraphs 1-69 and further allege as follows:

71. That J. R. Brown, a national spokesman for the Jehovah's Witnesses, acting individually, as agents for the other Defendants, and as part of their conspiracy:

(a) on or about May 9, 2002 stated to a *New York Post* newspaper reporter that the Plaintiff Barbara J. Anderson along with three other Jehovah's Witnesses members were to be summoned and tried before judicial committees on charges of "various spiritual violations" for the purpose of determining whether they should be "disfellowshipped" for "spiritual violations;"

(b) on or about May 11, 2002 stated to a *Washington Post* newspaper reporter, that the local judicial proceedings against these members "may focus on 'sins' unrelated to public comments [to *Dateline*] on sexual abuse" within the Jehovah's Witnesses' organization;

72. That, at the time the Defendant Brown made the aforesaid statements, he knew that the reporters would publish these comments in their respective newspapers and that they would be read by thousands of readers;

73. That, at the time the Defendant Brown made the aforesaid statements, he knew that the Plaintiff Barbara J. Anderson had not committed any spiritual violations and that no grounds for disfellowshipping existed; he also knew that the local judicial proceedings were being conducted as part of the Defendants' fraudulent and malicious plan to use their otherwise legitimate right to disfellowship members to destroy the credibility of Plaintiff Barbara J. Anderson prior to her *Dateline* appearance, so as to frustrate her efforts to assist victims of child sexual abuse and to prevent the church from sheltering child abusers;

74. That, at the time the Defendant Brown made the aforesaid statements, he knew that many Jehovah's Witnesses would interpret his statements as reflecting his belief, the belief of the local elders, and the belief of the Governing Body that Plaintiff Barbara J. Anderson had committed spiritual violations, including spiritual violation unrelated to the *Dateline* subject matter, and that warranted disfellowshipping; he also knew that, understood in this manner, the statements were false and defamatory;

75. That the Defendant Brown's statements were published in the New York Post and Washington Post, and republished in various other media;

76. That members of the public, including many past and present Jehovah's Witnesses, understood the statements to refer to Plaintiff Barbara J. Anderson and understood the statements to imply that the she had committed spiritual violations, including spiritual violation unrelated to the *Dateline* subject matter, that warranted disfellowshipping;

77. That Plaintiff Barbara J. Anderson suffered severe and permanent damage to her reputation as a result of the publication and republication of the Defendant Brown's defamatory statements;

78. That, on or about May 28, 2002, the Defendant Seely, acting individually, as agents for the other Defendants, and as part of their conspiracy, made representations to a television reporter seeking comment about Ms. Anderson's appearance on the *Dateline* program, that the scriptures used to disfellowship were found in First Corinthians the 5th Chapter, whereupon the reporter replied to Defendant Seely that First Corinthians Chapter 5 discusses gross sins, prominently featuring "fornication."

79. That the Defendant Seeley knew the reporter would quote his comments on the upcoming television broadcast in the course of a story reporting that Ms. Anderson had been disfellowshipped;

80. That, at the time the Defendant Seely made the aforesaid statements, he knew that the Plaintiff Barbara J. Anderson had not committed any spiritual violations and that

no grounds for disfellowshipping existed; he also knew that the proceedings were being conducted as part of the Defendants' fraudulent and malicious plan designed to use their otherwise legitimate right to disfellowship members to destroy the credibility of Plaintiff Barbara J. Anderson prior to her *Dateline* appearance, so as to frustrate her efforts to assist victims of child sexual abuse and to prevent the church from sheltering child abusers;

81. That, at the time the Defendant Seely made the aforesaid statements, he knew that many Jehovah's Witnesses would interpret his statements as reflecting his belief, the belief of the local elders, and the belief of the Governing Body that Plaintiff Barbara J. Anderson had committed gross sins, including fornication, that warranted disfellowshipping; he also knew that, understood in this manner, the statements were false and defamatory;

82. That the reporter showed the TV viewing audience the letter that Plaintiff received from Defendant Seely stating Plaintiff was disfellowshipped for "causing divisions," and added on camera that the scriptures used to find the Plaintiff guilty were found in First Corinthians, Chapter 5, as stated by Defendant Seely;

83. That members of the public, including many past and present Jehovah's Witnesses, understood the statements to refer to Plaintiff Barbara J. Anderson and understood the statements to imply that she had committed gross sins, including fornication, that warranted disfellowshipping;

84. That Plaintiff Barbara J. Anderson suffered severe and permanent damage to her reputation as a result of the publication and republication of the Defendant Seely's

defamatory statements;

85. That, on or about May 28, 2002, the Defendant David Semonian, acting individually, as agents for the other Defendants, and as part of their conspiracy, made representations to employees and writers for the *Tennessean* newspaper that 1 Corinthians chapter 5 in the Bible is the scriptural basis for their practice of disfellowshipping members such as the Plaintiff who are unrepentant about such serious sins such as "fornication, extortion, and drunkardness";

86. That, at the time the Defendant Semonian made the aforesaid statements, he knew that the Plaintiff Barbara J. Anderson had not committed any spiritual violations and that no grounds for disfellowshipping existed; he also that the proceedings were being conducted as part of the Defendants' fraudulent and malicious plan designed to use their otherwise legitimate right to disfellowship members to destroy the credibility of Plaintiff Barbara J. Anderson prior to her Dateline appearance, so as to frustrate her efforts to assist victims of child sexual abuse and to prevent the church from sheltering child abusers.

87. That, at the time the Defendant Semonian made the aforesaid statements, he knew that many Jehovah's Witnesses would interpret his statements as reflecting his belief and the belief of the local elders and the Governing Body that Plaintiff Barbara J. Anderson had committed such serious sins such as "fornication, extortion, and drunkardness, that she was unrepentant, and that she should be disfellowshipped;

88. That the Defendant Semonian's statements were published in the *Tennessean* on May 20, 2002;

89. That members of the public, including many past and present Jehovah's Witnesses, understood the statements to refer to Plaintiff Barbara J. Anderson and understood the statements to imply that had committed such serious sins such as "fornication, extortion, and drunkardness, that she was unrepentant, and that she should be disfellowshipped; he also knew that, understood in this manner, the statements were false and defamatory;

90. That Plaintiff Barbara J. Anderson suffered severe and permanent damage to her reputation as a result of the publication and republication of the Defendant Seely's defamatory statements;

WHEREFORE, the Plaintiff Barbara J. Anderson respectfully requests the Court:

(a) To award Plaintiff Barbara J. Anderson compensatory damages in the amount of Three Million Five Hundred Thousand Dollars ($3,500,000.00);

(b) To award Plaintiff Barbara J. Anderson punitive damages in the amount of Six Million Five Hundred Thousand Dollars ($6,500,000.00); and

(c) To award Plaintiff Barbara J. Anderson any other relief to which she may be entitled.

COUNT TWO
(Defamation through statements published to the congregation)

91. The Plaintiffs reassert and reallege paragraphs 1-69 and further allege as follows:

92. That on or about , July 25, 2002, the Elders of the Defendant Manchester Congregation of Jehovah's Witnesses, acting individually, as agents for the other Defendants, and as part of their conspiracy, stated to the congregation that that Plaintiff Barbara J. Anderson had been disfellowshipped; in August of 2002 the Elders of the Defendant Manchester Congregation of Jehovah's Witnesses, acting individually, as agents for the other Defendants, and as part of their conspiracy, stated to the congregation that that Plaintiff A. Joseph Anderson had been disfellowshipped;

93. That the Defendants knew that the congregation would understand this statement as a tantamount to a statement that Plaintiffs had committed serious spiritual violations that warranted disfellowshipping and that they were unrepentant sinners; they also knew that, understood in this manner, the statements were false and defamatory;

94. That, at the time the Defendants made the aforesaid statements, they knew that the Plaintiffs had not committed any spiritual violations and that no grounds for disfellowshipping existed; they also knew that the disfellowshipping had been conducted as part of the Defendants' fraudulent and malicious plan designed to use their otherwise legitimate right to disfellowship members to destroy the credibility of Plaintiff Barbara J. Anderson prior to her *Dateline* appearance, so as to frustrate her efforts to assist victims of child sexual abuse and to prevent the church from sheltering child abusers;

95. That members of the congregation understood from this representation that Plaintiffs had both committed serious spiritual violations that warranted disfellowshipping;

96. That Plaintiff Barbara J. Anderson and A. Joseph

Anderson have suffered severe and permanent damage to their reputation as a result of the publication and republication of the Defendants' defamatory statements;

WHEREFORE, the Plaintiffs respectfully request the Court:

(a) To award Plaintiff Barbara J. Anderson compensatory damages in the amount of Three Million Five Hundred Thousand Dollars ($3,500,000.00);

(b) To award Plaintiff Barbara J. Anderson punitive damages in the amount of Six Million Five Hundred Thousand Dollars ($6,500,000.00);

(c) To award Plaintiff A. Joseph Anderson compensatory damages in the amount of Three Million Five Hundred Thousand Dollars ($3,500,000.00);

(d) To award Plaintiff A. Joseph Anderson punitive damages in the amount Six Million Five Hundred Thousand Dollars ($6,500,000.00); and

(e) To award Plaintiffs any other relief to which they may be entitled.

COUNT THREE
(Invasion of privacy)

97. The Plaintiffs reassert and reallege paragraphs 1-69 and further allege as follows:

98. That, in making the defamatory representations about Plaintiff Barbara J. Anderson as alleged in paragraphs

71-89 and 92, the Defendants, acting individually, as agents for the other Defendants, and as part of their conspiracy, gave publicity to matters which placed Plaintiff Barbara J. Anderson before the public in a false light insofar as the representations indicated to members of the public that she had committed spiritual violations that warranted disfellowshipping;

99. That, in making the defamatory representation about Plaintiff A. Joseph Anderson as alleged in paragraph 92, the Defendants, acting individually, as agents for the other Defendants, and as part of their conspiracy, gave publicity to matters which placed Plaintiff A. Joseph Anderson before the public in a false light insofar as the representations indicated to members of the public that she had committed spiritual violations that warranted disfellowshipping;

100. That this false light in which the Defendants placed each Plaintiff would be highly offensive to a reasonable person;

101. That the Defendants had knowledge of the falsity of the publicized matter and the false light in which each Plaintiff would be placed.

102. That the aforesaid conduct invaded the privacy of each Plaintiff by casting each Plaintiff in a false light before the public;

103. That each Plaintiff suffered severe and permanent damage, including emotional distress and harm to reputation as a result of the Defendants' invasion of their privacy;

WHEREFORE, the Plaintiffs respectfully request the Court:

(a) To award Plaintiff Barbara J. Anderson compensatory damages in the amount of Three Million Five Hundred Thousand Dollars ($3,500.000.00);

(b) To award Plaintiff Barbara J. Anderson punitive damages in the amount of Six Million Five Hundred Thousand Dollars ($6,500,000.00);

(c) To award Plaintiff A. Joseph Anderson compensatory damages in the amount of Three Million Five Hundred Thousand Dollars ($3,500,000.00);

(d) To award Plaintiff A. Joseph Anderson punitive damages in the amount of Six Million Five Hundred Thousand Dollars ($6,500,000.00); and

(e) To award Plaintiffs any other relief to which they may be entitled.

COUNT FOUR
(Interference with Prospective Business Relationships)

104. The Plaintiffs reassert and reallege paragraphs and further allege as follows:

105. That, prior to being disfellowshipped by the Defendants, Plaintiff A. Joseph Anderson operated a plumbing business that was heavily dependent on repeat customers;

106. That, prior to being disfellowshipped by the Defendants, Plaintiff A. Joseph Anderson had existing business relationships with some members of the Jehovah's Witnesses Manchester congregation and had prospective business relationships with other members;

107. That the Defendants had knowledge of these existing and prospective business relationships;

108. That the Defendants intended to terminate these business relationships by disfellowshipping the Plaintiff and by barring all Jehovah's Witnesses members from patronizing the Plaintiff's plumbing business;

109. That the Defendants, acting individually, as agents for the other Defendants, and as part of their conspiracy, did in fact disfellowship the Plaintiff and bar all Jehovah's Witnesses members from patronizing the Plaintiff's plumbing business;

110. That, on information and belief, the Defendants did not disfellowship the Plaintiff because they had a good faith belief that he had committed spiritual violations but did so in bad faith for fraudulent, intentional, and malicious reasons;

111. That, on information and belief, the Defendants had an improper motive for taking this action in that they wished to punish Plaintiff A. Joseph Anderson for refusing to stop his wife from appearing on the Dateline program and for refusing to stop her from assisting victims of child sexual abuse and exposing church policies which protected members who abused children;

112. That the Plaintiff suffered damages in the form of the lost profits he would have made from these relationships but for the Defendants improper interference

113. That the Plaintiff is entitled to recover compensatory and punitive damages as a result of the Defendants' intentional and improper interference with the Plaintiff's existing business relationships;

WHEREFORE, the Plaintiff respectfully requests the Court:

(a) To award Plaintiff A. Joseph Anderson compensatory damages in the amount of Fifty Thousand Dollars ($50,000.00);

(b) To award Plaintiff A. Joseph Anderson punitive damages in the amount of One Hundred Fifty Thousand Dollars $150,000.00; and

(c) To award Plaintiff A. Joseph Anderson any other relief to which he may be entitled.

COUNT FIVE
(Breach of Fiduciary Duty)

114. The Plaintiffs reassert and reallege paragraphs 1-69 and further allege as follows:

115. That, prior to being disfellowshipped, Plaintiff Barbara Anderson, based on a lifetime of devotion to the Jehovah's Witnesses faith, reposed great trust and confidence in the elders of the Local Congregation and the Governing Body to provide advice on secular matters as well as spiritual guidance that would be in her best interest and in the best interest of her faith;

116. That the elders of the Local Congregation and the Governing Body knew that Plaintiff Barbara Anderson relied on them in this regard;

117. That this relationship of trust and confidence created a fiduciary duty owed by the elders of the Local Congregation and the Governing Body to Plaintiff Barbara

Anderson;

118. That the elders of the Local Congregation and the Governing Body, acting individually, as agents for the other Defendants, and as part of their conspiracy, between April of 2001 and August of 2002 breached this duty by failing to provide Plaintiff Barbara Anderson advice on secular matters as well as spiritual guidance that would be in her best interest and in the best interest of her faith;

119. That these Defendants instead gave her advice and took action against her to prevent her from exposing an established church practice of concealing child sexual abuse by church members from the authorities and the congregation;

120. That these Defendants acted intentionally, fraudulently, and maliciously in using their otherwise legitimate right to disfellowship members to silence her efforts to assist victims of child sexual abuse and to prevent the church from sheltering child abusers;

121. That Plaintiff Barbara J. Anderson suffered great damage as result of this breach of fiduciary duty including severe emotional distress and harm to her reputation;

WHEREFORE, the Plaintiff Barbara J. Anderson respectfully requests the Court:

(a) To award Plaintiff Barbara J. Anderson compensatory damages in the amount of Three Million Five Hundred Thousand Dollars ($3,500,000.00);

(b) To award Plaintiff Barbara J. Anderson punitive damages in the amount of Six Million Five Hundred Thousand Dollars

($6,500,000.00); and

(c) To award Plaintiff Barbara J. Anderson any other relief to which he may be entitled.

COUNT SIX
(Fraud)

122. The Plaintiffs reassert and reallege paragraphs 1-69 and further allege as follows:

123. That, on information and belief, the Defendants on or about April or May of 2002 formulated a fraudulent and malicious plan designed to use their otherwise legitimate right to disfellowship members to destroy the credibility of Plaintiff Barbara J. Anderson prior to her Dateline appearance, so as to frustrate her efforts to assist victims of child sexual abuse and to prevent the church from sheltering child abusers.

124. That, the Defendants, acting individually, as agents for the other Defendants, and as part of their conspiracy, intentionally represented to members of the Jehovah's Witnesses committees considering whether to disfellowship the Plaintiffs, to the members of the Manchester congregation, and to inquiring members of the media that the Plaintiffs had committed spiritual violations that justified their expulsion from the faith;

125. That the Defendants concealed from the members of the Jehovah's Witnesses committees considering whether to disfellowship the Plaintiffs, to the members of the Manchester congregation, and to inquiring members of the media that Plaintiff Barbara J. Anderson had not committed any spiritual violations;

126. That the Defendants knew that these representations were untrue, that the facts concealed were material, and that the Plaintiff had not committed any spiritual violation that would justify disfellowshipping;

127. That those members of the tribunals who were not a part of the fraudulent and malicious plan reasonably relied on these false representations and voted to disfellowship Plaintiffs;

128. That the Plaintiffs were disfellowshipped as a result of the Defendant's fraudulent misrepresentations and concealment of material facts;

129. That Plaintiff Barbara J. Anderson suffered damage in the form of great emotional distress and out of pocket fees paid to her attorney to represent her in the disfellowshipping proceedings as a result of the Defendants' fraud; that Plaintiff Barbara J. Anderson suffered damage in the form of great emotional distress and loss of profits from his business as a result of the Defendants' fraud;

WHEREFORE, the Plaintiffs respectfully request the Court:

(a) To award Plaintiff Barbara J. Anderson compensatory damages in the amount of Three Million Five Hundred Thousand Dollars ($3,500,000.00);

(b) To award Plaintiff Barbara J. Anderson punitive damages in the amount of Six Million Five Hundred Thousand Dollars ($6,500,000.00);

(c) To award Plaintiff A. Joseph Anderson compensatory

damages in the amount of Three Million Five Hundred Thousand Dollars ($3,500,000.00);

(d) To award Plaintiff A. Joseph Anderson punitive damages in the amount of Six Million Five Hundred Thousand Dollars ($6,500,000.00); and

(e) To award Plaintiffs any other relief to which they may be entitled.

COUNT SEVEN
(Intentional Infliction of Emotional Distress)

130. The Plaintiffs reassert and reallege paragraphs 1-69 and further allege as follows:

131. That, in using their otherwise legitimate right to disfellowship members to silence the Plaintiff Barbara J. Anderson's efforts to assist victims of child sexual abuse and to prevent the church from sheltering child abusers, the Defendants, acting individually, as agents for the other Defendants, and as part of their conspiracy, the Defendants at all times acted intentionally or recklessly;

132. That their conduct was so outrageous that it should not be tolerated by a civilized society;

133. That the conduct caused serious emotional distress to both Plaintiffs;

WHEREFORE, the Plaintiffs respectfully request the Court:

(a) To award Plaintiff Barbara J. Anderson compensatory

damages in the amount of Three Million Five Hundred Thousand Dollars ($3,500,000.00);

(b) To award Plaintiff Barbara J. Anderson punitive damages in the amount of Six Million Five Hundred Thousand Dollars ($6,500,000.00);

(c) To award Plaintiff A. Joseph Anderson compensatory damages in the amount of Three Million Five Hundred Thousand Dollars ($3,500,000.00);

(d) To award Plaintiff A. Joseph Anderson punitive damages in the amount of Six Million Five Hundred Thousand Dollars ($6,500,000.00);and

(e) To award Plaintiffs any other relief to which they may be entitled.

COUNT EIGHT
(Wrongful Disfellowshipping)

134. The Plaintiffs reassert and reallege paragraphs 1-69 and further allege as follows:

135. That, prior to the summer of 2002, Plaintiff Barbara J. Anderson and Plaintiff A. Joseph Anderson were both members and participants of the Jehovah's Witnesses and devout believers in the faith of this religion;

136. That the Defendants, acting individually, as agents for the other Defendants, and as part of their conspiracy, disfellowshipped both Plaintiffs.

137. That the Defendants disfellowshipped both

Plaintiffs for purely secular purposes and as part of their intentional, fraudulent and malicious effort to silence the Plaintiff Barbara J. Anderson's efforts to assist victims of child sexual abuse and to prevent the church from sheltering child abusers;

138. That the Defendants' use of their otherwise legitimate right to disfellowship members to silence Ms. Anderson's efforts to assist victims of child sexual abuse and to prevent the church from sheltering child abusers and to punish both Plaintiffs violates important public policies of the State of Tennessee designed to permit the free exercise of religion and those policies designed to prevent the sexual abuse of children and the reporting of said abuse;

139. That the wrongful disfellowshipping of both Plaintiffs caused each Plaintiff to suffer damages including emotional harm, damage to reputation, and out of pocket losses.

WHEREFORE, the Plaintiffs respectfully request the Court:

(a) To award Plaintiff Barbara J. Anderson compensatory damages in the amount of Three Million Five Hundred Thousand Dollars ($3,500,000.00);

(b) To award Plaintiff Barbara J. Anderson punitive damages in the amount of Six Million Five Hundred Thousand Dollars ($6,500,000.00);

(c) To award Plaintiff A. Joseph Anderson compensatory damages in the amount of Three Million Five Hundred Thousand Dollars $3,500,000.00;

(d) To award Plaintiff A. Joseph Anderson punitive damages in the amount of Six Million Five Hundred Thousand Dollars $6,500,000.00; and

(e) To award Plaintiffs any other relief to which they may be entitled.

Respectfully submitted,

s/Barbara J. Anderson
BARBARA J. ANDERSON

s/A. Joseph Anderson
A. JOSEPH ANDERSON

s/Jerre M. Hood #4669
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Certificate of Service

This is to certify that I have this day served a copy of this pleading upon counsel for all interested parties by hand delivery, facsimile transmission and/or by depositing the same in the United States mail, First Class postage and addressed as follows:

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This 12 day of June, 2003.

s/Jerre M. Hood

No. 07-188

FILED
AUG 23 2007
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

Supreme Court of the United States

BARBARA J. ANDERSON,

Petitioner,

v.

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., *et al.*,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE TENNESSEE COURT OF APPEALS, MIDDLE DIVISION

RESPONDENTS' BRIEF IN OPPOSITION

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STATEMENT PURSUANT TO RULE 29.6

Respondent, Watchtower Bible and Tract Society of New York, Inc., has no parent corporation and no publicly held company owns 10% or more of its stock.

Respondent, Watch Tower Bible and Tract Society of Pennsylvania has no parent corporation and no publicly held company owns 10% or more of its stock.

Respondent, Kingdom Support Services, Inc., has no parent corporation and no publicly held company owns 10% or more of its stock.

Respondent, Christian Congregation of Jehovah's Witnesses has no parent corporation and no publicly held company owns 10% or more of its stock.

Respondent, Religious Order of Jehovah's Witnesses has no parent corporation and no publicly held company owns 10% or more of its stock.

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STATEMENT OF THE CASE

In May 2002, Mrs. Anderson met with elders of her congregation to discuss their concerns about her turning away from her faith. (Pet. App. 8) She refused to meet with them a second time and was thereafter disfellowshipped (excommunicated) as a member of the congregation. (Pet. App. 8) In July 2002, this decision was upheld by a church appeal tribunal. (Pet. 6) Thereafter, the announcement "Barbara Anderson has been disfellowshipped" was made at the local congregation. (Pet. 7)

Mrs. Anderson brought a lawsuit for "wrongful disfellowshipping." (Pet. App. 118) All the alleged violations of Tennessee tort law on which the lawsuit was based were predicated on her contention that she committed no spiritual violation and thus was wrongfully disfellowshipped. (Pet. App. 103, par. 73; 104, par. 80; 106, par. 86; 108, par. 94; 109, par. 98; 114, par. 120; 115, par. 125; and 117, par. 131)

The Tennessee Court of Appeals held that "Tennessee recognizes no cause of action for wrongful expulsion from a religious organization." (Pet. App. 24) It thus held that the trial court should have dismissed all of Petitioner's claims, as they were all predicated on the alleged wrongful expulsion. (Pet. App. 2) On May 14, 2007, the Tennessee Supreme Court denied Mrs. Anderson's application for permission to appeal. (Pet. App. 1)

REASONS FOR DENYING THE PETITION

I. This Court Lacks Jurisdiction to Review a State Court Decision Based on Independent and Adequate State Common Law Grounds.

The Petition for Writ of Certiorari must be denied since this case is not within this Court's appellate jurisdiction. Title 28 U.S.C. § 1257(a) does not permit review of a state court's final judgment when that judgment is predicated on state law. The judgment of the Tennessee Court of Appeals was based upon state common law. Therefore, this Court lacks jurisdiction to review the judgment and the Petition must be dismissed.

Petitioner's complaint posed no issue involving a state statute. "Because a common-law cause of action cannot be said to be a 'statute' for purposes of § 1257(2), this case is not within our § 1257(2) appellate jurisdiction." *Local 926, Union of Operating Engineers v. Jones*, 460 U.S. 669, 675 n.7 (1983). Although commenting on 28 U.S.C. § 1257(a)'s predecessor, this Court's analysis that the common law is not the equivalent of a "statute" to convey jurisdiction, underscores that Petitioner's common-law claims cannot serve as a predicate for this Court's jurisdiction. Therefore, this is not a matter "where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution." 28 U.S.C. § 1257(a).

The complaint against the elders and national religious organization put forth causes of action exclusively grounded in Tennessee common law. Two of these—fraud and defamation—serve as the basis of Petitioner's questions presented for review. The Tennessee Court of Appeals applied Tennessee law in dismissing these claims. Thus, this Court lacks jurisdiction to review that decision.

A. Dismissal of the common law tort of fraud was based solely on Tennessee's common law.

Petitioner's first question presented for review focuses on "a cause of action by the church member against the church for common law fraud." (Pet. i) In dismissing this count of the Amended Complaint, the Tennessee Court of Appeals explicitly based its decision on state common law:

> In Tennessee, the common law tort of fraud consists of an intentional misrepresentation of a material fact or producing a false impression in order to mislead another or to obtain an undue advantage over him; and, the misrepresentation must have been made with knowledge of its falsity and with a fraudulent intent, must be related to an existing fact which is material, and the plaintiff must have reasonably relied on the misrepresentation to his injury. *Brown v. Birman Managed Care, Inc.*, 42 S.W.3d 62, 66-67 (Tenn. 2001). The Andersons' allegations do not meet these elements.

(Pet. App. 39-40)[1]

Since this count was dismissed solely upon state common-law grounds, this Court lacks jurisdiction to review the first question presented based on the common-law tort of fraud.

---

1. Petitioner's husband, A. Joseph Anderson, was a plaintiff in the lawsuit below. However, he was not a party to the application for permission to appeal to the Tennessee Supreme Court. He is not a party to this Petition.

B. Dismissal of the defamation claims was solely based on Tennessee common law.

Petitioner's second question presented is based upon common-law defamation. This Court has no jurisdiction to review this question as the Tennessee Court of Appeals' dismissal of the defamation claims was based on state common-law grounds.

> To establish a claim for defamation in Tennessee, a plaintiff must establish that the defendant published a statement with knowledge that it was false and defaming to the plaintiff, with reckless disregard for the truth of the statement, or with negligence in failing to ascertain the truth of the statement. *Sullivan v. Baptist Memorial Hospital*, 995 S.W.2d 569, 571 (Tenn.1999); *Press, Inc. v. Verran*, 569 S.W.2d 435, 442 (Tenn. 1978) . . .
>
> The Andersons assert that some of the defendant church officials made statements to the general public through the mass media that defamed Barbara Anderson. Thus, by claiming that the Church's statements about their disfellowshipping were defamatory, the Andersons necessarily claim that the statements were false. However, their complaint does not quote in full any of the public statements that include language alleged to be defamatory, nor were copies of the allegedly defamatory articles or tapes of the broadcasts attached to their complaint.
>
> Some of the allegations, however, do include some of the specific words used. One allegation states that one of the named defendants stated to a

> newspaper reporter that Ms. Anderson, along with three other church members, "were to be summoned before congregation tribunals on charges of 'various spiritual violations' for the purpose of determining whether they should be 'disfellowshipped' for 'spiritual violations.'" Another allegation states that the named defendant stated to another reporter that "the local judicial proceedings against these members 'may focus on sins unrelated to public comments on sexual abuse' within the Jehovah's Witnesses' organization."
>
> The complaint further alleges that the defendant who made these statements knew that Ms. Anderson "had not committed any spiritual violations and that no grounds for disfellowshipping existed" and that he also knew that the congregational tribunals were being conducted as part of the Church's plan to destroy the credibility of Ms. Anderson so as to frustrate her efforts to "prevent the church from sheltering child abusers."

(Pet. App. 68-71 (footnotes omitted))

In contrast to Petitioner's assertion that "church officials defamed"[2] her, the court below actually held that, under state

2. As the Tennessee Court of Appeals noted, Petitioner did not quote fully any allegedly defamatory language. To overcome this, Petitioner makes statements not supported by the record, e.g. "church officials defamed Plaintiff." (Pet. 2) Further, she mischaracterizes the nature of the Amended Complaint's allegations: "Mr. Semonian was referring to Ms. Anderson as one of the persons charged with fornication, extortion, and drunkenness and who was unrepentant (Cont'd)

law, a secular court could not determine whether statements about religious matters were defamatory because a secular court could not determine the truth or falsity of whether one committed a spiritual deviation.

> Thus, according to the complaint itself the statements alleged to be defamatory refer to religious reasons for disfellowshipping and shunning in general, and reference was made to sins and spiritual violations that could have referred specifically to Ms. Anderson. According to the complaint, in the Congregation of Jehovah's Witnesses, such violations include stirring up unrest, creating dissension, or causing doubt about the Church. These were the charges brought against Ms. Anderson and the reason given for her expulsion from the church. In order to determine whether the statements at issue were defamatory, a court would be required to determine, among other things, if they were false. We cannot see how such an inquiry could be conducted and adjudication made without encroaching on religious matters. Additionally, to determine the falsity of the statements, a court would need to examine the correctness of the decision of

---

(Cont'd)

about committing these sins." (Pet. 6) However, the Amended Complaint stated: "David Semonian . . . made comments to the media that 1 Corinthians chapter 5 in the Bible is the scriptural basis for the practice of disfellowshipping members who are unrepentant *about such serious sins as* fornication, extortion, and drunk[enness]." (Pet. App. 99 (emphasis added)) Further, the Amended Complaint does not allege that David Semonian in fact made any statement specifically about Petitioner.

> the Church tribunal that she had committed violations meriting expulsion. This we cannot do.

(Pet. App. 72-73)

To further underscore their state law dismissal of the defamation counts, the Court of Appeals insightfully observed that such claims were merely a repackaging of Petitioner's wrongful disfellowshipping claims:

> The last two paragraphs of the complaint's section on the defamation claims are revealing. They include statements that "Plaintiff has not had a falling away of her faith, but is most concerned about the welfare of her religion" and the problems she perceives in the Church's handling of child sexual abuse reports. Further, she states that she "is not taking issue with her church's doctrine regarding disfellowshipping with resultant shunning . . . but is asking for relief for wrongful disfellowshipping . . . due to the church's hierarchy being motivated to disfellowship Plaintiff by reasons unrelated to the dictates of their religion."
>
> These statement make clear that, in essence, the defamation claims are simply a restatement of the Andersons' basic claim that the disfellowshipping of Ms. Anderson was wrongful and not because of her violation of any Church tenets, but, instead, for other reasons related to her activities. We have already determined that the wrongful disfellowshipping and related claims based on the same argument are precluded from court adjudication. The same reasons and legal principles

> dictate that the defamation claims are likewise outside the courts' authority to adjudicate.

(Pet. App. 73)

As the Tennessee Court of Appeals held, all of the counts in the Amended Complaint—including the defamation claims—were predicated upon the notion that Petitioner was wrongfully disfellowshipped. That court correctly held that determining whether a congregant violated church tenets was beyond the purview of secular court review. As such, the Petition should be dismissed.

C. Dismissal of Petitioner's lawsuit was based on Tennessee law.

Petitioner's church membership dispute cannot be adjudicated as a result of well-established Tennessee law. The Tennessee Court of Appeals well articulated the nub of Petitioner's lawsuit:

> Most of the Andersons' claims stem from their disfellowshipping and the manner in which they were deprived of their memberships in the Jehovah's Witnesses. They allege the disfellowshipping itself was wrongful, and most of their other claims are based on consequences directly related to or flowing from that action. We begin with the fundamental issue of the Andersons' expulsion from the Congregation and their claims that this expulsion was wrongful.
>
> The Church argues that the freedom of religious bodies to determine their own membership is such

> a fundamentally ecclesiastical matter that courts are prohibited from adjudicating disputes over membership or expulsion. We agree.

(Pet. App. 20-21)

The Tennessee Court of Appeals held that long-established Tennessee law precluded a state court review of a religious decision:

> Tennessee recognizes no cause of action for wrongful expulsion from a religious organization. Our courts will not review such decisions, but will take as binding the decision of the church. A party aggrieved by such action has no redress in the courts, but must look instead to the organization itself. *Martin v. Lewis*, 688 S.W.2d at 74; *Bentley v. Shanks*, 348 S.W.2d at 904. Otherwise, courts would be called upon to determine the correctness of a church's decision about whether a person had complied with religious doctrine and practices . . .
>
> Consequently, we find there is clear and controlling authority that Tennessee courts have no authority to decide questions of membership or the correctness of expulsion from membership. In 1892, our Supreme Court stated it had found "no reported case where any civil court in this country has undertaken to overrule the fact of excommunication upon any ground whatever." *Nance v. Busby*, 18 S.W. at 879. We have also found no cases, in this jurisdiction or elsewhere, where a court exercised jurisdiction to adjudicate whether a church member was wrongfully expelled.

(Pet. App. 24-25)

It is true that the First Amendment and this Court's ecclesiastical abstention analysis was alluded to; however, this Court does not obtain jurisdiction by virtue of this. This Court has consistently held that there is no review of state court decisions resting on state law grounds that are independent of any federal question and adequate to support the judgment. *Lambrix v. Singletary*, 520 U.S. 518, 522-23 (1997); *Coleman v. Thompson*, 501 U.S. 722, 729 (1991).

According to the Tennessee Court of Appeals,

> [t]he Tennessee Supreme Court similarly held long ago that courts of this State are without jurisdiction to inquire into or supervise the decisions of religious organizations. *Nance v. Busby*, 18 S.W. at 881, citing *Watson*, 80 U.S. at 727. Tennessee courts have continued to refuse to hear disputes that are perceived to be purely ecclesiastical in nature. *Travers v. Abbey*, 58 S.W. 247, 247-48 (Tenn. 1900) (holding that dispute over removal of pastor did not involve property or personal rights, related to governance of and discipline by church, and courts would not review the decisions of ecclesiastical judicatures); *Martin v. Lewis*, 688 S.W.2d 72, 73 (Tenn. Ct. App. 1985).
>
> Thus, decisions by the governing bodies of religious organizations on matters related to doctrine, faith, or church governance and discipline are not reviewable by civil courts. *Mason v. Winstead*, 265 S.W.2d 561, 563 (Tenn. 1954) (holding that in ecclesiastical matters, church tribunals have exclusive authority without interference from the civil courts). Stated differently, courts will defer to

> the highest tribunal in a religious organization on questions of discipline, faith, or ecclesiastical rule, custom, or law and will not interfere with such decisions . . .

(Pet. App. 12-14 (footnotes omitted))

As such, this Petition should be denied.

II. There is No Compelling Reason to Grant the Writ Since There Exists No Substantial or Unsettled Federal Question Presented by This Church Membership Dispute.

Petitioner endeavors to establish this Court's jurisdiction by raising the notion that this case presents an important federal question. The federal question Petitioner posits is not presented in this case.

There are many areas of secular life in which the government plays a necessary role in its regulating of citizens' dealings with one another. This includes resolving disputes over property, resolving disputes over contracts, resolving allegations of employment discrimination, and resolving allegations of criminal conduct (such as the abuse of children). However, there are spiritual areas of life in which the government should play no role. The Tennessee and federal constitutions assure that a person's spiritual relationship with his church is one area of life where civil courts should not become entangled.

Of course, religious organizations are not totally immune from governmental regulation. When religious organizations buy property, enter into contracts, hire employees, commit

crimes, or engage in other such secular matters, they are governed by the laws that also apply to secular organizations. However, there is no law that regulates membership in a religious organization, nor could there be.

In an effort to create a federal question, Petitioner, like other disgruntled ex-congregants from various other churches, seeks refuge in dicta found in *Gonzalez v. Roman Catholic Archbishop of Manila*, 280 U.S. 1 (1929) to support her proposition that it would be appropriate for the government to regulate the interaction of religious organizations and their members when members claim they have been a victim of "fraud" or "collusion." However, *Gonzalez's* holding and the entire body of this Court's decisions show that what Petitioner contends is a broad "fraud" or "collusion" exception to the Ecclesiastical Abstention doctrine is nothing of the sort, and does not apply to disputes involving church member discipline.

Gonzalez involved a dispute over property and indicated that in matters of civil rights the First Amendment may not be an absolute bar to secular court review of religious decisions involving secular matters.

> In the absence of fraud, collusion, or arbitrariness, the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive, because the parties in interest made them so by contract or otherwise.

Gonzalez, 280 U.S. 1 at 7-8. The issue before the *Gonzalez* Court was the right to receive income—a civil right. The *Gonzalez* Court distinguished between the civil (or secular)

and the ecclesiastic. In secular matters, the Court indicated that—unlike ecclesiastic matters—the First Amendment might not be a complete bar to secular court review.

This Court in *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976), again considered whether the Ecclesiastical Abstention doctrine allowed for any limited secular review of church property disputes, which involved a dispute over diocese property and assets. The Court noted that "*Gonzalez* first adverted to the possibility of 'marginal civil court review.'" *Serbian*, 426 U.S. at 712. However, the *Serbian* Court held "the suggested 'fraud, collusion, or arbitrariness' exception to the *Watson* rule was dictum only." *Serbian* then rejected any arbitrariness exception to the Ecclesiastical Abstention doctrine in the field of property disputes. *Id.* The Court did not address fraud or collusion since neither were asserted in the case.

In *Jones v. Wolf*, 443 U.S. 595 (1979), another property dispute case, this Court addressed the possible existence of a "fraud" or "collusion" exception to the Ecclesiastical Abstention doctrine. Its holding makes clear that this potential exception would not, and could not, apply outside of property disputes.

Jones involved "a dispute over the ownership of church property." *Id.* at 597. The Court also noted that "'the First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes.'" *Id.* at 602 (quoting *Presbyterian Church v. Hull Church*, 393 U.S. 440, 449 (1969)). The Court permitted a trial court to engage in this circumscribed review of a property dispute by use of "neutral principles of law." The neutral principles approach allows "'no inquiry into religious doctrine.'" *Jones* at 603

(quoting *Maryland & Va. Churches v. Sharpsburg Church*, 396 U.S. 367, 368 (1970)). "The method relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges. It thereby promises to free civil courts completely from entanglement in questions of religious doctrine, polity, and practice." *Jones* at 603. Thus, the use of neutral principles to resolve a dispute over the ownership of real property was the context of the Court's "fraud" or "collusion" comment. *Id.* at 609 n.8. In Petitioner's case, her claims of "fraud" relate, not to any property dispute, but to her claim that she was wrongfully disfellowshipped. The *Jones* Court made it clear that the Ecclesiastical Abstention doctrine was not abrogated by stating that a court cannot "pass on questions of religious doctrine, and to usurp the function" of an ecclesiastical body. *Id.* at 609.

It is not possible for a court to exercise jurisdiction over a church disciplinary dispute by applying "neutral principles" of law. No such principles exist when the discipline is based on the Church's interpretation of Scripture. Not surprisingly, Petitioner does not attempt to explain how calling the elders as witnesses to open their Bibles and explain how and why they concluded, based on the Scriptures, that she was guilty of spiritual violations is anything but a religious matter and, as such, a constitutionally prohibited inquiry.

While the government has a proper role in resolving property disputes between vying religious factions and in resolving employment discrimination charges against religious employers,[3] it has no constitutionally feasible role

3. Unable to find any case law anywhere supporting their view that secular courts may review matters of internal church discipline, Petitioner is forced to rely on an employment discrimination case (Cont'd)

in resolving disputes over church member discipline. If a court were to make a judgment that the reasons for excommunication were "fraudulent," it would—by necessity—have determined what are, and are not, legally acceptable reasons to expel a member from a church. Such a state determination of a quintessential religious matter is precisely what the Establishment Clause forbids. The church, and not the state, establishes standards to determine who is, and who is not, a member of the church.

Since *Serbian* was decided in 1976, no state or federal court anywhere in the United States has exercised jurisdiction over a church disciplinary dispute—even when the plaintiff alleged that the discipline was the product of church "fraud" or "collusion." Thus, it is not surprising that Petitioner cited no authority in support of her argument that there is an exception to the Ecclesiastical Abstention doctrine within the context of religious discipline. The reality is that all courts in the United States have uniformly refused to exercise jurisdiction over disputes involving "church polity" or "church administration," *Serbian*, 426 U.S. at 710, including

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(Cont'd)

involving a teacher who brought employment discrimination claims against a religious school. *See Ohio Civil Rights Comm'n v. Dayton Christian Sch., Inc.*, 477 U.S. 619 (1986). The hiring of a teacher at religious schools may be a secular matter. Petitioner would like to draw a parallel between the hiring and firing of employees of religious schools and the disciplining of members of a church. However, there is no equivalent in the secular world to a religion's discipline of its members for violating the Bible's standards of conduct, which the former congregants agreed to adhere to when becoming members of the religion. While the government has a role to play in protecting citizens' rights against age, sex, or race discrimination in employment, the Tennessee and federal constitutions forbid such regulation in the context of discipline of a church member.

attempted actions alleging claims of "fraud" or "collusion." Thus, there exists no substantial and unsettled question of federal law requiring this Court's review.

CONCLUSION

For these reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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